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Official Report of Debates (Hansard)

Wednesday 21 February 1996

Journal des débats (Hansard)

Mercredi 21 février 1996



**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Advocacy, Consent
and Substitute Decisions
Statute Law Amendment Act, 1995

Loi de 1995 modifiant des lois
en ce qui concerne l'intervention,
le consentement et la prise
de décisions au nom d'autrui

Chair: Gerry Martiniuk
Clerk: Donna Bryce

Président : Gerry Martiniuk
Greffière : Donna Bryce

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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Wednesday 21 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mercredi 21 février 1996

The committee met at 0903 in committee room 1.

ADVOCACY, CONSENT
AND SUBSTITUTE DECISIONS
STATUTE LAW AMENDMENT ACT, 1995
LOI DE 1995 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'INTERVENTION,
LE CONSENTEMENT ET LA PRISE
DE DÉCISIONS AU NOM D'AUTRUI

Consideration of Bill 19, An Act to repeal the Advocacy Act, 1992, revise the Consent to Treatment Act, 1992, amend the Substitute Decisions Act, 1992 and amend other Acts in respect of related matters / Projet de loi 19, Loi abrogeant la Loi de 1992 sur l'intervention, révisant la Loi de 1992 sur le consentement au traitement, modifiant la Loi de 1992 sur la prise de décisions au nom d'autrui et modifiant d'autres lois en ce qui concerne des questions connexes.

ONTARIO FEDERATION FOR
CEREBRAL PALSY

The Chair (Mr Gerry Martiniuk): Good morning. Welcome, members, ladies and gentlemen. Our first submission is the Ontario Federation for Cerebral Palsy, Tim Kinney, provincial coordinator.

Mr Tim Kinney: On behalf of the Ontario Federation for Cerebral Palsy, I'd like to comment that some of the rhetoric around Bill 19, as rhetoric tends to be, is simplistic and incomplete in describing the complexities and needs of this situation, specifically the part about putting advocacy back in the hands of families and individuals. Certainly we must do all we can to encourage individuals to advocate for themselves and, where necessary, to encourage support of family and significant others to assist people to the extent that one might need.

Clearly government did not like the solution and costs associated with the Advocacy Commission, and concerns have been voiced about some of the powers in areas such as substitute decision-making, but Bill 19 goes further than that to also eliminate the basic advocacy and rights advice services.

To my knowledge, advocacy has always been in the hands of vulnerable people and their significant others. It is as a result of the frequently crazy-making experiences of trying to get us other people to listen that people came to believe there needs to be some form of organized support for individuals and families in the province. There was a need prior to the commission and there will continue to be a need after the commission is disbanded.

A little bit about the Ontario Federation for Cerebral Palsy: It was formed 50 years ago by member groups that

consisted of families and individuals with CP and many other disabilities, given the time period. Our mandate was to work primarily with groups, because we thought the local organizations would be able to take care of anything in their area. With individuals or people who phoned in, we would mostly just provide information. We've helped many groups develop services over the years.

I guess one of our assumptions was that families and individuals could pretty much look out for themselves, especially where services were organized by family organizations—family board members and so on. Similarly, as individual concerns might come up, we felt they would be dealt with fairly and expeditiously. For years, when individuals contacted us, we would simply just refer them back to the same agency or to another group in that area geographically.

Over time, and given our mission of helping groups develop services for people, we were really struck that a large part of the volume of calls and the mail were not about those other organizations in the towns and cities but were about the very ones that had been formed to support people with disabilities.

In terms of putting advocacy back into the hands of people, these were the families and the individuals themselves who were calling us and saying that they'd exhausted their efforts in trying to get some attention to matters and they needed some further help. Over the years we've got into that more and more, of trying to support people, and particularly around agencies that provide direct services to people. We found it was very difficult to get their attention because they believed they were the leader in the community around issues for disability, so how could they be in the wrong in terms of serving somebody with a disability? There just wasn't room for that with some agencies, although there are many that do very well.

The federation encourages people to speak for themselves. Frequently after we'd talked to them and encouraged them to talk to the agency, they would come back to us weeks or months later, often because there just was no customer service process, no way to hear complaints; or if there was, it seemed to just stall off into endless meetings and not get addressed. When this happened, we would support the person to try to negotiate something that would at least resemble some form of due process. But often, if the earlier efforts had failed, people really weren't interested in due process and it just wouldn't go on from there.

Calls to government, the funding ministries, would tend to just die at that point, because they say we have to call the agency to see what the situation is. If the agency

felt there was no problem, then there was really no problem and no way to pursue it further.

Beyond that, the only way to get attention would be to start writing letters to your MPPs or other people, and this would take a lot of courage. Contrary to what people often say, that they're a bunch of complainers, it takes a lot of courage, because it's often going to incur the wrath of the people who are providing you a daily service. If it's attendant care services, where they're getting you out of bed, that's where you have to go home at night after your talk with the MPP, or maybe the MPP's called there. Often staff can be either just in a very quiet way unfriendly or very openly very unfriendly to the fact that whatever started off as a concern between you and them has now got outside the organization.

With respect to talking about situations where people are not respected, I'm talking about two general categories: one where it's involving directly a staff or a family member or an associate of theirs in the community or, at a second level, where there have been concerns made known and the process just isn't working. So that, we feel, is also a very serious part of disrespect.

I've touched a little bit on the need for accountability with agencies that serve people. There is often a lot of confusion. An agency like ours, we've encouraged somebody to talk and they've tried the process. At the point where we might come along with somebody and talk to an agency or sit in on the discussion, people are saying, "What are you doing here talking for these people?" or whatever, and that's not what we're there for. We're there largely because the agencies or people involved have refused to listen to the person in the first place. So we're saying, "Please give this person a hearing, and from whatever comes out of that, let's please see a due process that we could agree would look at least reasonable."

That's very difficult, because even where they're a member group, we've lost about five member groups over that over the years. They said: "Well, we'd rather just dissociate ourselves. We're no longer affiliated." They'd send a letter to all of the government ministries and so on, and at that point—we never had any authority with them in the first place—they can just say, "We refuse to talk about it," and there's no further recourse for people.

0910

I think for many citizens and possibly for MPPs, we might assume that because vulnerable people tend to be served by the sort of apple-pie, not-for-profit organizations of Ontario, this ensures that people's best interests are always respected. While there are thousands of really wonderful staff, family members and others who are involved with people in their everyday lives, and these people are to be really highly commended, available information indicates that vulnerable people are very much at risk in Ontario today. Unfortunately even in 1996, accountability to people's customers, even where there's a direct contract relationship, is only as good as the paper it's written on. It's entirely up to the agency whether it honours that or not. If the customer feels it's not honoured, there's really no recourse under most funding mechanisms that we come to deal with.

Appeal policies: As I said, they're often just on paper. For example, a single mother in the Windsor area had half her hours per month cut off from home care. I suggested: "Well, why don't you just appeal it? That should be fairly straightforward. You seem to have good cause for it." She phoned me back a couple of days later to say, "They have no appeal policy in home care." It's just not expected to be questioned, whatever their decisions are. In this case they were cutting half of her hours per month. She's got two small kids at home, a lot of responsibility. Our concern was that there was just no venue to have this heard. We talked to the ministry: "Well, sorry, that's where the policy is at, at this point. That's all that's required."

I just have some examples of people's experiences. I've been talking generally. One group of individuals who became a group I guess just out of having common concerns with a particular provider—this is an attendant services provider—finally tracked down the president of the organization and thought, "Well, if we can't get a response from the staff, we'll talk to the president." They had an impromptu meeting with him, about an hour and a half. He was busy at the time, said he would get back to them shortly. Six months later, they were getting very frustrated and wondering when this meeting was. There were calls back and forth. So they took it in their hands just to write out all their issues, about 10 pages describing the nature of them, and sent them to the board saying: "You'd agreed on a meeting. This is an ancient issue." They also CCed it to the Ontario federation and one other advocacy group, plus to the funding ministry.

The provider was quite horrified that these people were telling tales on them. The provider complained to the funding ministry that they weren't following the due process. By all accounts, there really just was nothing that resembled due process. Further, the board had its lawyer send a letter, at our expense, chiding them for referring to themselves as vulnerable people—this was a year and a half ago, when there was a lot of discussion about vulnerable people in the news—and threatening to sue them for libel, indicating to them that action could be taken on the basis of libel if they continued to talk about this agency's deeds in public. It wasn't really in public; it was to an advocacy group, plus to the funding agency.

Another customer of this same agency was only allowed to appeal a decision after we intervened and told the agency it would really be important—they were a member group at the time; no longer—that if you're terminating somebody's services and they have a bone to pick about it, that you give them a chance to talk about it first. So after we talked to them and to the funding ministry, they reluctantly agreed to give the person a hearing. Based on the information they found at the hearing, they found that there was no reason to take her services away. She still has services. But it was over \$8,000 in bills between the various meetings and the workup to this. She lives separate from her family because of her support needs, but her husband and family put up some \$8,000, and that's not to be recovered. The agency probably spent a similar or larger amount for their own board's lawyers, and that was all paid for by the govern-

ment. So in terms of this need for support and advocacy, there really are two levels of support available to people.

Another customer with the same group—I don't mean to pick on this one, but they just provide a lot of examples—dared to disagree with a decision about how their lifting would take place. Because they disagreed with it, their services were going to be terminated. So they said, "Let's have a third party." They had one third party come in and the same manager again overturned that, saying, "I don't agree with that third party." They had another third party come in and she didn't agree with that third party, and again with the fourth one. It finally went to a formal appeal. When they found out that these same people who had done these assessments were going to be at the appeal, they decided that they shouldn't have the appeal at that time; it should be later. So for undisclosed reasons it was postponed, and it's never happened yet. I think that was September 1994. The person has ultimately been successful at finding services at another agency.

But that's a very difficult aspect: If the relationship breaks down, even if it was the fault of the customer, in most cases there's only one agency that provides services in a given community. So with no recourse and no alternative, these are very difficult circumstances that people face. A number of people just decide to put up and shut up and go along with it.

In another community, a woman who requires about eight hours of support a day as a result of a motor vehicle accident came home from university one day to find out that her services were terminated. It was something to do with a dispute the night before. The agency had unilaterally decided that everybody needs to be lifted in a Hoyer lift, that's the only safe way to do things—and that's a questionable decision—but they gave somebody a little bit of training and then left her on night shift. So when this woman was going to go to bed the night before, she had untrained staff who put her in a Hoyer lift. We later found out, through having an assessment, that she was far too light—she was only about 90 pounds despite being 20-odd years old—to be in a Hoyer lift and it was dangerous for her. Her experience the night before was 20 minutes of swinging around the room. So she finally told the woman, "Get me out of this thing and put me to bed the normal way." So the next day she came home from university to find out that she had no services because she failed to comply with a safety requirement.

There was no hearing of it. After about five weeks, though, through advocacy intervention the agency reluctantly agreed to take her back, but it was not very friendly to her. As a lot of former staff came forward and testified later or explained later, there was real organized racism and disrespect for this person, stemming from one person who was in a team leader position. Because it was a smaller operation, she was the team leader; she did all the training, the hiring and the firing. Head office was miles and miles away and she was their sole source of information as to what the problem was.

So when things went sour and they found out that she had a lot of information to back up her side that the agency might be in the wrong, they spent I don't know how many thousands for a top lawyer in their community

from a highly respected firm, and that's who we had to deal with. He had spent three days over the weekend talking to staff. They came up with an idea that they didn't need to talk about these other issues because the reason she no longer had the services was that staff felt she was rather dangerous to deal with.

Very discouraging; December 22, not a good time to find replacement services. But thankfully, the assistant deputy minister at the time, Mr Ennis, did intervene and provide her emergency services for a period of time. She's lived for the past two years on a series of emergency services. I had a call from her yesterday while I was preparing this. She's been told by March 15 to either reduce the services she needs by about 25% or—well, there are no ifs; that's it. She's been told she needs to find another provider. But again, there's no other provider in this community. She's 35 miles outside of a major community where she could live, but with eight-hour-a-day needs, that really doesn't fit into most agencies' spectrum of services.

So she remains in a very difficult situation. She's lost two semesters in her master's degree, the first time because she lost services and again when this was all up in the air December and January; she didn't go back to school because there was just too much going on.

The federation knows, from our experience, that individuals and families want help in advocating for people when they need help and that help that is available often isn't sufficient to really overcome, because we're talking about really powerful forces at times. So for me just to take an hour off my job one day and go and help somebody in a meeting, there needs to be a lot of follow-through. I think there is room for professional advocacy.

0920

The OFCP would like to see a provincial body with a mandate to support the advocacy efforts of individuals and supportive others, and it's necessary because the existing groups just can't provide enough support. Often people fall between the cracks. The CP group might help people, but another group might not help with this type of advocacy.

A large part of the structural problem we deal with is that the government has farmed out services to a hodgepodge of agencies—many of them reputable, many of them not. There's no way of distinguishing them. There's no energy put into distinguishing which agencies have a quality of service prior to renewing contracts; they're just turned over, rolled over year from year, regardless of whether there's a thousand complaints or one about that agency. Where appeal processes exist, they rarely loop back outside the agency and particularly not back to the funding ministry.

We also think that some form of body is needed, and it could also help in the area of education of people. We would never think that a body was going to provide all the advocacy, but just something there that would support the efforts of people that are already very much needed.

With that, I'll turn it over to you.

Mr Rosario Marchese (Fort York): Thank you for your presentation, Mr Kinney. The examples you give are the kinds of examples that we've heard from other people that make a strong case for advocacy, and I think they

make a strong case for government-involved advocacy. The government members say that the government should not be involved in this kind of advocacy, that it's too intrusive. The commission was just too wasteful; \$18 million was just too much. One other suggestion: "Maybe you could have reduced that. Wouldn't that have been helpful?" I guess it's not a sufficient answer. They say: "There's too much intervention; rights advisers are interventionist and that's not helpful. We should just help volunteers and organizations to do their job better." I'd be interested to hear the kind of comments they make again in this regard.

We don't think that's adequate. We think we need to get to these abuses and we think what you say here is critical, that you need a provincial body with a mandate to support the advocacy efforts of others. We need a body that has authority, because you talk about how people have no authority. When people go through an appeals process, there's no way to deal with them unless you have a higher authority in the ministry being able to deal with them. Do you have a response to what the government is telling you, that maybe we can help you do your job a little bit better by, I don't know, perhaps training or helping volunteers better? Is that the answer?

Mr Kinney: I'm not hearing that we're going to get any support. We were very encouraged to know that there was some kind of advocacy that was coming in the province. So I kind of started thinking that I could start turning maybe some of these more difficult cases over, or ones that I just simply couldn't follow through on, because as a non-profit organization it's very difficult that we take in—we're used to largely ignoring them, thinking that there are local people taking care of them. As we worked through our denial and realize that our member groups and other groups weren't looking after things on a regional basis, we got involved, but there's still so much that we're not able to deal with. I don't know what kind of support will be there for people.

We're looking at moving to a competitive system where contracts will be—we're opening up to for-profit. I think it will really help that there be more than one provider in any jurisdiction; that's critical, be it for-profit or not-for-profit. We need a measure of quality. One side is that the funding group needs to be requiring quality, but I think the people who have to live with the results of our efforts—I've helped evolve things, you guys have helped fund it—those people need some kind of support when it's all not working. We can't just say let's wait another 10 years and see how maybe this thing will develop over time and get better.

Mrs Marion Boyd (London Centre): I want to thank you for coming. I think it's very hard for an organization that is an umbrella organization for a lot of other organizations to talk about the problems of those organizations. I think it's important, though, for us to be very clear, as you say, that although there are many well-meaning people out there, appeal processes and the way to deal with this just isn't there yet, and it becomes more and more urgent with long-term care going out into the community, doesn't it?

Mr Kinney: Yes, because people are unsupervised, maybe have 10 to 12 hours of training in many cases and

then work unsupervised for years on end in very private situations, plus with people who cannot speak for themselves and the family's not around to supervise. So there just isn't a basis. In speaking about matters today, our organization took a stance that we would look into matters whether it involved our member groups or not. So what I'm talking about today sometimes involves our group, sometimes other groups, and other umbrellas say, "Don't look into ours, because that's our customer."

Mr Frank Klees (York-Mackenzie): Thank you for your presentation. Just for the record, I want to assure you that we as a government are in fact very interested in ensuring that advocacy is alive and well in this province. But what we disagreed with the former government on is how we're going to go about that.

You've made reference in your presentation to many government-funded organizations that should be out there providing services on the front line and you've ended up in legal debates with them about the lack of service. Our view is that the last thing we need is to add one more level of bureaucracy into this province so that you have one more government bureaucracy to get into legal debates with.

What we want to do is start to get to the root of the problem, and really I think what you've referred to is a quality control issue. It's not that there aren't agencies out there being funded. The problem is that many of the services that are being provided are inefficient and aren't meeting the needs of people in the community. What we want to do is ensure that we work with organizations such as yours to provide the kind of quality control in the community that we need, and we look forward to working with you on that.

Do you have any suggestions for us in terms of how we can get to the root problem? How can we get feedback more effectively from organizations such as yours and from end users as to the agencies that aren't performing well so that we can deal with that?

Mr Kinney: One thing: I provided you a separate piece, and it comes from an Accreditation Ontario newsletter. First, I'll address that briefly: There's need for both. I'm involved and I'm trained. One of the things is that, out of my interest and concern, I've become trained in a quality control effort. Through the auspices of Accreditation Ontario, which we're becoming a sponsor of, we will be helping organizations who are willing—it's strictly voluntary, because there's no requirement by government—to open up their doors and have us come in. I've spent three weeks out of the last three months visiting at agencies and interviewing not the staff but the customers. Based on methodology that was developed in the States and used across the States as an accreditation tool—we simply don't have time to reinvent the wheel—it's based on independent living values and philosophies about people having choice and respect.

We're doing that. We're doing the quality control. non-profit agencies are taking the lead in that. Government has helped. Comsoc helped with a small grant to get it piloted, but based on those 12 pilots, there were some good things we found. But I'll just point out on page 6—it's the second side and it starts with "Pilot Results" and the first side is "Bulletin Board"—some of the key areas

here that we're talking about around vulnerability are whether people choose the goals—we found this present in five out of 12 agencies; people choose where they live and with whom—five out of 12; where they work—there are obvious barriers there, but still three out of 12 only; people choose the services they get in half the agencies. Remember, these are agencies that voluntarily opened up their doors to a pilot with a new tool. I couldn't argue that they're representative; I would guess that they're some of the leaders in the province, but not absolutely, because some of us may believe we're leaders when we're not.

People have friends: That was found to be present in only two out of 12 agencies where we sampled with the customers. An interview is two to four hours, plus follow-up with family and significant others. So you get a pretty good sense of how this person's doing.

People exercise their rights: This was found to be present in only five of the 12 agencies, the ones that willingly opened up their doors.

People are afforded due process if rights are limited, some kind of an appeal process in only six of the 12. We asked, "Did the staff even know that there's an appeal process?" "Well, not really. We think we're supposed to call someone if there's a problem."

0930

Mr Michael A. Brown (Algoma-Manitoulin): Thanks very much for your presentation. As I was listening to you—some of these stories are not unusual for a constituency politician who becomes involved in them. I just listened to the government side, and it strikes me that we've seen and are seeing considerable downsizing of at least funding for groups out there that are providing these services to your community. There's less money in the system, and projected to be less and less money in the system. We're also seeing the elimination of the Advocacy Commission under this legislation. Make no mistake; that's happening. We're also finding out that while they chatter a lot about a new system of advocacy and all that kind of stuff, they're going to study it. So that means really, at least in the short term, there's nothing.

That all adds up, to me. If you're going to cut funding to services and provide fewer services, the last thing you want out there is anybody to be saying, "You're providing less services." It just makes pure common sense. We've seen an attack on benefits for disabled people, the assistive devices program, you name it—paying a fee for drugs. All those kinds of things are happening, but I also know there's something that's very interesting happening, and that's something called—I think it's called CCAC or whatever the name is for long-term community care, the new organization. Are you involved in that organization, in the planning of the various ones around the province, to see that the people you represent are having real input into how these organizations are structured and will provide care to those individuals in the province?

Mr Kinney: There are a number of people with disabilities, often affiliated with organizations, and also some staff associated with our member groups and other organizations, who are involved—mainly the people are involved with the development of district health councils and have been sort of carried over, so the appearance is

that there is involvement. I'm not able to really comment in a definitive way.

Mr Michael Brown: You're saying your organizations are actively involved with long-term care—

Mr Kinney: Yes.

Mr Michael Brown: —with these organizations. The evaluations you spoke to Mr Klees about: Are those being provided—

Mr Kinney: That's only just starting, out of maybe 1,000 agencies. This is a cross-disability instrument that can be used—maybe out of 1,000 or 1,500 agencies in the province, we've worked with 30 of them so far. Twelve of those had the funding provided by the government. The Ministry of Community and Social Services did provide the money for the pilot, and up front they said they'd provide no further funds, so they've told all their agencies they're not allowed to spend money on this tool. That's the status right now. We're hoping that as they see some of the results and as agencies can find some way to spend the \$3,000 or \$4,000 a year it costs to have an assessment, that our community, including the ministry and others, will come to realize that we need this external look at agencies.

It's two things. It's a learning tool—it's not just strictly an assessment, but the people who use the tool learn, in the same time during the day, how they can pay attention, as with any good-quality tool, to involving the individual maybe in making the choice more so than the family. What we've found is that while we want to support family involvement—that's clearly the mandate of our organization—often staff and the people involved tend to just automatically ask the family, "Which apartment do you think this person should live in," when they could have asked the person. It's usually only when you don't have any family that you get to make the decisions yourself, for people who are more vulnerable.

The Chair: Thank you, Mr Kinney, for your thoughtful presentation.

I welcome on behalf of the committee the honourable member for Etobicoke-Rexdale, Mr John Hastings.

ONTARIO MARCH OF DIMES

The Chair: The next submission will be the Ontario March of Dimes; Mr Jim Grant, chair of the government relations committee; Bill Hoch, member of the government relations committee; and Emily Atkins, government relations coordinator.

Mr Jim Grant: I'm Jim Grant; I'm the chair of the government relations committee for the Ontario March of Dimes. Joining me today is Emily Atkins. Bill Hoch, unfortunately, is delayed. He's coming in from Hamilton and he may be joining us; I can't assure you of that.

I'd like to thank you very much for allowing us to present today. I will basically go through the submission as it is set out in the document that you've received. If there are any questions for follow-up, myself or Emily will be happy to address those.

The Ontario March of Dimes exists to promote the independence and dignity of adults with physical disabilities. Independence, as we see it, does not simply mean the ability to perform physical activities. It encompasses

an individual's ability to make decisions about all facets of his or her life from the mundane to the extraordinary.

This is why the Ontario March of Dimes is concerned about the government's new approach to advocacy in Ontario, as embodied in Bill 19, An Act to repeal the Advocacy Act, 1992, amend the Substitute Decisions Act, 1992 and amend other Acts in respect to related matters. We feel that certain aspects of the new legislation may limit individual rights and freedoms.

The Ontario March of Dimes is primarily a service organization, assisting 10,000 people with physical disabilities in Ontario each year through our 58 locations across the province. We provide independent living assistance, assistive devices and employment services. While 90% of the Ontario March of Dimes' funding supports these three programs, we also offer recreation and leisure, post-polio education and group support, augmentative communication, stroke recovery, non-profit housing and medical research.

Another facet of the Ontario March of Dimes is advocacy on behalf of people with disabilities. Our volunteer board of directors is active in developing policies on social issues which touch the rights and privileges of people with disabilities.

Our policies are informed by the principle that people with disabilities should have the same freedom to make decisions about their lives as any other citizen. We therefore lend our support to measures which make it easier for people with disabilities to choose and which ensure that when others must make decisions for them, their rights are protected.

Ontario March of Dime is thus concerned that the government's new direction with respect to vulnerable persons in Ontario may make it more difficult for individuals with disabilities to achieve and maintain the independence that so many of us take for granted.

We are concerned about the effect of repealing the Advocacy Act and provisions of the Health Care Consent Act and Substitute Decisions Act which may make it easier for a person with a disability to be subjected to decisions beyond his or her control, or treatment which he or she does not desire.

We would also like to comment on the Advocacy Commission's proposal, *Now More Than Ever*.

Under the heading, rights advice, information and advocates: When the Advocacy Act, 1992 is repealed, the Ontario March of Dimes believes that some protection afforded people with disabilities will be lost. The Advocacy Act, and by extension the Advocacy Commission, provided important resources to persons with disabilities. Together, the act and commission were designed to help vulnerable people understand their rights and express their wishes. They were also designed to promote the rights of vulnerable people and provide means to remedy situations in which the lives of those people were at risk. With its repeal, rights advice and advocates will no longer be as readily available to vulnerable persons.

Specifically, repeal of the Advocacy Act removes all references to rights advice and advisers. Such references are removed from the other legislation as well. For example, the requirement that individuals be advised of their right to refuse an assessment and their right to

appeal an assessment have been eliminated. It also eliminates the requirement that an individual be informed by the assessor that he or she has been found incapable. Individuals still have rights, but lose the guarantee that they will be informed of what those rights are.

The Ontario March of Dimes recommends that the legislation be amended to require that individuals be informed if they have been deemed incapable and of their right to refuse an assessment and to appeal decisions.

The next section is determination of best interests: We are concerned that there may be insufficient safeguards to prevent action from being taken against the wishes of persons who are deemed incapable. Under both the new Health Care Consent Act and the amended Substitute Decisions Act, the family becomes primarily responsible for substitute decision-making and consent to treatment for incapable individuals. While this is not in itself a radical departure from the old legislation, two changes cause concern.

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First, the definition of "family" has been expanded to include persons who are related by blood, marriage or adoption, without clarifying the proximity of the relationship. Second, Bill 19 removes the requirement that a family member make a statement to the effect that they have had contact with the incapable person within the previous 12 months and believe that he or she would want to make their decisions on his or her behalf.

While families may act in the best interests of vulnerable persons, there are no guarantees. The Ontario March of Dimes is concerned that these changes will increase the likelihood that persons in a decision-making capacity will be unaware of the incapable individual's wishes. The more distant a relative, the less likely he or she will be able to know an individual's preferences.

Since the legislation does not require that they be in close touch with the vulnerable person, relatives may be uninformed about that person's state of mind or wishes stated prior to becoming incapable. There is also the danger that family members might have ulterior motives in making decisions about an incapable family member. It is not logical to turn over protection of an individual's interests to someone who may not have those best interests at heart.

The Ontario March of Dimes therefore recommends that the requirement for personal contact between the substitute decision-maker and the incapable person be reinstated in Bill 19. We also recommend that a provision be added to require that family members be educated in the principles of substitute decision-making as set out in the act prior to assuming decision-making power.

Discrimination against people with disabilities: We are also concerned that provisions of the Health Care Consent Act may make it possible for health care practitioners to ignore the wishes of persons who are capable but who have difficulty communicating. Clause 23(3)(b) permits health care practitioners in an emergency to treat a capable individual who has difficulty communicating. This in effect removes the hospital or health care practitioner's responsibility for accommodating a person with a disability and protects them from liability should the treated individual challenge their decision.

Ontario March of Dimes recommends that the protection from liability for treatments performed when a person has difficulty communicating be removed from the Health Care Consent Act. Health care practitioners should be held responsible for their actions, regardless of the circumstances of the individual they are treating. If their chosen course of action is proper and defensible, it is immaterial whether that person has a disability or not.

Statutory guardianship: Statutory guardianship was originally intended to allow the public guardian and trustee to manage an individual's property in the event that he or she was admitted to a psychiatric facility and found to be incapable of managing property for himself or herself. Under the Substitute Decisions Act, statutory guardianship could be invoked if a person was found incapable and did not refuse the guardianship. The person was informed of his or her rights first by the capacity assessor and then by an advocate.

Bill 19 amends the Substitute Decisions Act so that the public guardian becomes the statutory guardian as soon as the person is deemed incapable by an assessor. Thus, a single assessment gives the PGT complete control over a person's property. The requirement for rights advice prior to the PGT assuming control is removed, so that the individual is informed that he or she may apply to the Consent and Capacity Review Board for a review of the assessor's finding of incapacity only after the PGT has control.

Ontario March of Dimes has two objections to this change. First, if the government's objective is to remove unnecessary bureaucracy and interference in the lives of individuals, it does not make sense to force people to apply to the review board if they object to guardianship. Time-consuming and expensive investigations and hearings will result. Our second objection is to the elimination of rights for vulnerable people that this represents.

Ontario March of Dimes therefore recommends that these amendments to the Substitute Decisions Act be dropped and the original clauses restored.

Now to the Advocacy Commission proposal: The Ontario March of Dimes believes that the proposal, Advocacy: Now More Than Ever, put forward by the Ontario Advocacy Commission has merit and should be seriously considered by the government. Creation of an independent, non-profit corporation, with a mandate to provide community development, training and education and systemic advocacy, could fill the gap created by repeal of the Advocacy Act.

After participating in the government's recent consultations around potential new approaches to advocacy after the Advocacy Act is repealed and the Advocacy Commission eliminated, Ontario March of Dimes feels that the proposal offers sorely needed leadership in this field. The consensus at the discussion group in which we participated was that independent advocacy is necessary. It was apparent, however, that the government did not have a framework in mind for providing it.

Ontario March of Dimes therefore supports the Advocacy Commission's idea. While we believe that there is room for adjustment in the specifics of the plan, we do endorse the proposed objects of the new non-profit corpo-

ration. The Ontario March of Dimes suggests that the government seriously consider this idea as a means of achieving community based advocacy without excessive bureaucracy or expenditure. Implemented as a pilot project for a specified term, the advocacy corporation could be thoroughly tested before requiring a substantial long-term commitment of funds and infrastructure.

In conclusion, the Ontario March of Dimes believes that Bill 19 should be amended. As drafted, the legislation curtails the ability of vulnerable people to control their own lives by making it more difficult for them to know and understand their rights. It makes it easier for persons who may not understand an individual's wishes to become their substitute decision-maker, and it makes it more difficult for individuals to retain control over their affairs.

It is difficult enough for people with disabilities to lead fulfilling and complete lives. Society throws up barriers in nearly every area of endeavour and discriminates against people with disabilities. Legislation which makes it more difficult for individuals to exercise their rights is counterproductive and regressive.

Ontario March of Dimes therefore urges the government to implement the amendments we recommend in this submission.

Mr Klees: Mr Grant, thank you for your presentation: some very helpful suggestions for us. You make reference in your brief that your organization provides advocacy on behalf of disabled people. For how long a period of time have you been able to do that, and do you intend to continue to be involved in advocacy?

Mr Grant: The Ontario March of Dimes actually has, as part of its mandate, that as one of its clauses, it's been doing it for some 40 years, shortly after its existence into being. We have a government relations committee whose primary function is the advocacy role. Obviously, there are corporate objectives and corporate concerns of the organization, but we are active in, for and with people with disabilities, both with the Ontario Advocacy Commission and other organizations that speak for themselves. What the March of Dimes prefers to do is work with rather than be a front person on these issues. As an agency with a mandate also for advocacy, we feel that's the best means by which to do that.

Mr Klees: You'll be prepared to continue to work with us as we evolve—

Mr Grant: Oh, yes.

Mr Klees: —the appropriate forum for the province. I wanted just to confirm for you as well—you referred to the Advocacy Commission proposal that has been put forward as an alternative—we are considering that proposal as one of the options. I just want to assure you that proposal is being looked at by us.

Mrs Helen Johns (Huron): Mr Grant, I just wanted to talk to you about the concern you had with family members who weren't close to the individual and then being able to act. I was wondering, I'm sure that you're aware of section 31 that says that anyone can go before the Consent and Capacity Board to change their representative at any time. The person who has been declared incompetent can do it, as could a friend if they wished to go and say they wanted to become the substitute deci-

sion-maker. That alternative doesn't satisfy the need you have, the concern that people would have the people they want to be their substitute decision-makers?

Mr Grant: It is an option. For an organization such as ourselves, providing independent living assistance through our support service living units, experience would show that is not always the best approach to have. There are instances where family members do take advantage of those in a vulnerable condition. While I guess I agree with you that the means by which to make it happen exist in the legislation as proposed, it is something that has to be acted upon by an individual who, in their circumstances, either may not be aware of that as an option or will be in an incommunicative or incapacitated state, so that the option does not exist. Rather than having it as something that is a reactive gesture, I believe the legislation should be revised so that it is proactive in terms of that family member having to have that closer contact.

It's not so much specific to the legislation that I'm speaking to it. The reason we raise it is that, as an organization, we see that these concerns come up on an organizational basis where there is potential for abuse and not looking after the person's interests. That's why I table it here.

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Ms Emily Atkins: May I add a point? It's true that there is that recourse. However, with the absence of the rights advice, we feel that people may not be informed they have that avenue. That's our chief fear.

Mrs Elinor Caplan (Oriole): Thank you very much for an excellent presentation. The first question I have for you is, was the Ontario March of Dimes association consulted by any of the ministers prior to the tabling of this legislation?

Ms Atkins: We were not specifically consulted on the legislation. However, we did participate in the focus groups around the government's plans after the Advocacy Act is repealed.

Mrs Caplan: But that was after this legislation was tabled, was it not?

Ms Atkins: Yes.

Mrs Caplan: So you were not party to any formal or informal consultation with the minister prior to the tabling of Bill 19?

Mr Grant: No, we were not.

Mrs Caplan: The second question I have is around something that isn't in your brief but that I'd like your advice on, if that's possible. I think you're very clear on your recommendations around people being told of their right to appeal to the board and also of their right to know when they've been found incapable. That's clear; we've heard that consistently. While there was someone before us yesterday who suggested that the atmosphere was so poisoned that providers would not respond to a statutory requirement, frankly I think the overwhelming view is that if it can be phrased in a way that would encourage communication to achieve that goal, we might be able to do something that would be acceptable.

I think we have to try to find something that will not get everyone's backs up with the notion of the Mirandizing of the previous legislation, but that still is clear about the obligation. I've been thinking about it in this

context: Rather than putting it in an upfront, statutory, "You must advise," what do you think of the idea of saying—this legislation, as you know, says that any provider or family member or substitute or anyone who consents to treatment in good faith, and the treatment is provided in good faith, is free from all liability. What if there was an exception to that liability that said you wouldn't have an exemption from liability unless you were satisfied that the patient had been told that they were either incapable or unable to understand and communicate, and if the patient had been informed of their right to appeal to the board? Would that be a way around a statutory obligation to inform?

Mr Grant: I agree with that wholeheartedly. I think that is a good approach to ensuring that—

Mrs Caplan: I don't think you can have it both ways, that you don't have any obligation statutorily to inform and yet you're free from liability. It's been troubling me since yesterday and I just came up with this idea of, "Well, you get the freedom from liability unless...." Do you think that might work?

Mr Grant: Yes. I agree with that.

Mrs Caplan: The other point is that there has been some confusion over whether or not caregivers should be able to be substitute decision-makers. Under the substitute decisions legislation they cannot be guardians, but there is permission for a caregiver to be able to make decisions for purposes of treatment as a substitute decision-maker, I believe, in certain rare circumstances.

What about a clause—this would not apply to families who might be future heirs—that would be what I would call a conflict-of-interest clause, so that if the caregiver would benefit materially, then they could not. They could be in an employment relationship as, for example, an attendant might be if the person wanted that attendant to make decisions. Would you have any comfort with that notion of a clause that clearly said if you were in a conflict situation you'd require Consent and Capacity Board consent before you could assume that role?

Mr Grant: Yes, I would agree with that. I would be interested to extend on your thinking there to know how a conflict would be determined.

Mrs Caplan: I think a fee-for-service relationship where you would benefit by ordering services for the person would be one that was clear. There might be others, and where there was any question or concern by an organization such as yours you could then make an application to the board.

Mr Grant: Yes, that's a good idea.

Mrs Boyd: Thank you very much for coming this morning. One of the things I was struck by in both the previous presentation and yours is that originally many of the groups like yours formed and were fairly disease- or condition-specific, the cerebral palsy association and March of Dimes connected to muscular dystrophy and that sort of thing. But what I hear from both of you is that what is happening in the disability community is an acknowledgement that whatever the condition or the disease that has created the disability, there are more things that people have in common than differences, and this cross-disability approach is beginning to be the

favoured one by many of the large associations. Am I correct in that?

Mr Grant: Yes.

Mrs Boyd: My understanding was that one of the real objectives of the Advocacy Commission was to foster that cross-disability approach so that in fact we stop doing things because we have an interest, because we have a loved one who happens to be in this particular position, that we know the situations and the barriers facing people are similar no matter what their circumstances, and really trying to stop that divide-and-conquer issue that has really plagued getting changes to community acceptance, to the kinds of supports people have. Am I right on that?

Mr Grant: Yes.

Mrs Boyd: You would see another function of a replacement for the Advocacy Commission as being that cross-disability encouragement, that ability for us to look at the barriers rather than the specific disease people face?

Mr Grant: Yes, and in our involvement with the Advocacy Commission prior to this—March of Dimes is a sitting member—great strides were made in that area, because it's not always easy to break down those sort of cross-disability barriers, but it was a very good exercise and it's one that should continue.

Mrs Boyd: One of the things we found in all the discussions around long-term care is that there still is a huge gulf between those who become disabled as a result of becoming seniors and those who have been disabled for most or all of their lives. So the real issue, as we really look at the problems people face, is that the realities of the barriers are the same; the difference in lifestyle and focus is different. For most of your clients, the effort is to become more independent. For most seniors who become disabled, the idea is how to maintain an independence already there and yet have the supports you need as you go into more and more disability.

It really is necessary for an overview, for some group to be helping associations to overcome the barriers between them and really stop what I would say, and I don't mean to be harsh, but what has tended to be a bit of a competition over clients. Am I correct in that, that really none of you has enough resources to do what you want to do, but clients often feel that their effort to be independent, even from the helping associations, is prevented by that sort of ownership people have of people because they first became connected to those associations.

Mr Grant: I think associations will always have areas of specialization specific to their own client base, but it does not preclude that for the purposes of common barriers, as you mentioned, they can be addressed in a unified fashion.

Mrs Boyd: Those specialized agencies are mostly around the research funding and the kind of focus for research, isn't it, to try and deal with a specific condition that has sort of won the hearts of the association?

Mr Grant: Yes.

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Mr Marchese: I'm one of those people who believe in rights advice and one who believes that governmental advocacy is critical, that we can't just leave it to individ-

uals out there and to the moral responsibility of everybody to adopt it magically somehow. The government has to do it.

It's interesting, when people are suffering and people talk about the various cases of suffering of people with disabilities, that that somehow is almost assumed when we talk about how that intervenes with other people's rights, where somehow it's controversial or adversarial to have rights advisers; if you have these sad stories that are being told and nobody there is able to have the authority to intervene, that that shouldn't take precedence over an organization that somehow is not delivering, and that that is called intrusive, is called government intervention. For me, it's incomprehensible.

The government members say, "We're considering the proposal by the commission, the \$3-million proposal," but I don't believe them, because when they speak they say: "It's interventionist, it's a bureaucracy, we don't need it. What we need to do is support volunteers out there." So when they say, "We're considering that option," I frankly don't believe them.

We thank you for the kind of history that you bring and your support to advocacy and we think your submission is very, very useful to us.

The Chair: Mr Grant and Ms Atkins, thank you very much for taking the time and trouble to come before our committee. We appreciate it.

Mrs Johns: On a point of clarification, Mr Chairman: Mrs Caplan, I just want to ask you, what you had suggested there you envisioned would bring about a lot of challenges within the court system, both for consumer and health practitioner, and increase the burden and make it maybe more litigious than we want it to be. I was unsure about how you thought that would go. If there was no protection from liability, do we move into the court system, which I don't think anybody wants to do?

Mrs Caplan: I do think people who have been wronged have to have some recourse and I don't think it would unduly burden because it would give an incentive to ensure that people were told of their incapacity and rights. So in fact it would be a positive incentive to ensure that happened and therefore you wouldn't see the litigation. But surely the litigation would be a protection for those whose rights had been abridged.

Mrs Johns: Well, except the—

The Chair: Thank you. I thought this was supposed to be an opportunity for making inquiries. I was just doing it while Ms Thériault got organized.

CARMEN THÉRIAULT

The Chair: Next is Carmen Thériault of the firm of McMillan Binch. Welcome.

Ms Carmen Thériault: All right. Perhaps I should tell you a little bit about myself and my firm. I am a lawyer and a partner of McMillan Binch, which has offices in Toronto and Mississauga. We're part of a national partnership with offices in Vancouver and Montreal. We serve a broad range of clients—large, small, domestic, foreign, public, private—and two of our principal areas of practice are health law and estate planning. In that context we routinely provide advice to individuals,

hospitals, health care facilities of other kinds and health professionals.

Since the existing legislation came into effect in April 1995, we have advised many individuals, many hospitals, concerning the implications of the legislation, procedures and policies that should be followed to reflect its provisions and how staff members of hospitals and financial institutions should be educated to ensure that the legislation is complied with.

Although most people I think would support the basic principles behind the legislation, the practical reality in the experience of many of my clients is that it has created a system and procedures that are to some extent unnecessarily complex, costly and adversarial in nature. So we view Bill 19 as a very positive development in that it addresses some of the most serious concerns that have been expressed to us by clients, and I'd like to go through some of the key sections with you.

First of all, we view the repeal of the Advocacy Act and the elimination of mandatory rights advice as it now exists as a positive development. The practical reality of the existing system is to cast an adversarial net over the relationships of doctors, patients and families which in turn can lead to increased costs and unnecessary friction in the doctor-patient relationship. Perhaps more importantly, it has the potential to result in delayed treatment.

Having said this, some provisions should be made to ensure that vulnerable people are made aware of their rights under the legislation, particularly in so far as rights of appeal are concerned. In particular, there appears to be no assurance at the moment, under Bill 19, that a person who is assessed as incapable for consent-to-treatment purposes specifically will be made aware of those rights. Also, it's not clear at the moment that those who cannot afford independent legal representation will be able to obtain it in all circumstances.

What is the answer? There are some suggestions in my paper, and I'll leave you to go through them. They are by no means perfect or complete. It is something that needs to be investigated further. I have seen the proposal of the Advocacy Commission and it is an interesting one, although I haven't yet had an opportunity to review it fully.

Turning to the new definitions that have been included in the act, in particular the amendments to the definition of "treatment" and the introduction of definitions for a "course of treatment" and a "plan of treatment" are very helpful. They clarify the circumstances in which consent must be obtained and the procedures that should be followed and that is welcome.

Having said that, a number of hospitals still feel that there is some concern that it is not entirely clear as to whether a health practitioner who supplies a component of a plan of treatment, such as an X-ray for example, is entitled to assume that informed consent has been obtained in respect to that particular component by the practitioner who proposed the plan of treatment. We think that it would be reasonable for the practitioner who performed the X-ray, for example, to be able to make that assumption that proper consent was obtained, and that issue should be clarified perhaps by means of an amendment to section 27 which deals with liability concerns.

Under section 11 of the act, a health practitioner will be able to assume that consent to a treatment includes consent to a variation in the treatment or to the continuation of a treatment at a different setting if there's no significant change in the nature, expected benefits, material risks and material side-effects as a result.

This is a positive change. Under the existing legislation, health practitioners are often required to go through these consent procedures repeatedly with patients because of minor variations in treatment or because a treatment has to be provided in a different setting. In each case, revisiting the matter of consent achieves no real benefit in terms of the patient, we don't think, and serves only to increase the time and the costs involved in delivering the required medical care.

The inclusion of a definition for "relative" is another positive development given that this is a class of substitute decision-makers that is vague and uncertain at the moment. Health practitioners need to know who they can turn to for consent if the individual in question can't provide it himself or herself.

With regard to emergency treatment, section 23 would permit a health practitioner to administer emergency treatment without consent where communication with the patient cannot take place because of a language barrier or because there's a disability that prevents the communication from taking place. In the case of a language barrier, it can be difficult to obtain appropriate interpreter services in a timely manner. Many of the hospitals that we have dealt with have expressed concern in that regard. Many of them have very busy emergency departments and they are worried that a patient's health could be put at risk unnecessarily because of delays resulting from a language or disability barrier, so this change in the legislation is welcome.

Treatment without the consent of a substitute decision-maker is dealt with in section 25 of the legislation. There are occasions that arise where health practitioners are concerned that a substitute decision-maker is not acting in accordance with the principles set out in the legislation. When this occurs in the context of an emergency situation, the practitioner should be able to treat the patient in accordance with the provisions of the act despite the refusal of the substitute decision-maker of that treatment. Section 35 reflects this principle and again we see it as a positive development.

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The amendment to the test for informed consent is also welcome since it helps clarify the obligations of health practitioners who propose treatment. Section 13 and section 18 of the act deal with the withdrawal and withholding of treatment. Section 13 now confirms that a substitute decision-maker can withdraw consent to treatment on behalf of an incapable person in appropriate circumstances and section 18 says that a substitute decision-maker can also refuse treatment on behalf of an incapable person.

Both of these provisions help clarify the powers of substitute decision-makers. In many cases these powers have to be exercised in very difficult circumstances. In those cases, although the decisions and the reasons for the decisions should be discussed, families and health

care providers should not be burdened with uncertainty as to what is permitted or not permitted by the legislation.

Witness attestation requirements is the next issue that I'd like to deal with, and I deal with this on almost a daily basis, because I'm often called upon to prepare powers of attorney in my practice. The proposed changes are set out in subsections 10(3) and 48(3) of the SDA; those are the existing witness requirements rather.

Powers of attorney by their nature are often required to be executed at a person's home or at hospitals or at other health care facilities. Since the Substitute Decisions Act was introduced, many hospitals and many financial institutions have adopted policies that prevent their employees from acting as witnesses to a power of attorney. Why have they done this? Because they're worried that their employees and the institutions themselves might be drawn into potential litigation as a result of these witness requirements.

If you look at subsection 10(3), I'll just take a moment to read it to you. It says: "Each witness shall, if the witness has no reason to believe that the grantor is incapable of giving a continuing power of attorney, sign the power of attorney as a witness." The problem words are "if the witness has no reason to believe that the grantor is incapable of giving a continuing power of attorney."

The introduction of that provision significantly altered the law in Ontario with regard to the duties imposed upon a witness who is witnessing a document. Under a power of attorney, that person is no longer simply signing and attesting to the fact that the document was signed by someone else. Instead, subsection 10(3) requires that that person understand that this is a power of attorney that's being signed and it implies that the witness has to make some kind of capacity assessment of the grantor. In order to be able to do so, presumably the witness has to be aware of the mental capacity test that's required to be met by the grantor.

Needless to say, many if not most witnesses have no experience or training that would equip them to make such an assessment, and very few people have any actual knowledge of the mental capacity test prescribed by section 47 of the Substitute Decisions Act. It's probably also safe to assume that most witnesses don't even understand that they're under this kind of an obligation. They're probably still thinking that all they're doing is signing and attesting to the fact that someone else has signed this document. That's clearly not the case.

That leads us to wonder, what about all those powers of attorney that are signed out there by witnesses who haven't complied with this section? They're probably not valid. They don't comply with the act and they're probably not valid technically.

In addition, a number of legal experts have written papers suggesting that where a person acts as a witness to the execution of a power of attorney in circumstances where he or she had any reason whatsoever to believe that the grantor was incapable, that witness could be held liable personally if the power of attorney is subsequently attacked on the ground that the grantor was incapable at the time of execution and there has been any loss to the grantor's estate by reason of the actions or omissions of the attorney.

I should also note that these witnessing requirements are even more onerous and are inconsistent with those that apply to wills, and there doesn't appear to be any persuasive justification for this difference.

Given the liability concerns that I've described, it can be very difficult for a patient who is in hospital to find two individuals who are prepared and able to act as witnesses to a power of attorney. That's particularly the case where they have few or no family members who would qualify as possible witnesses. It's also the case where a patient is suffering from some kind of an illness or disability that leaves him or her lucid and capable most days, but incapable on occasion. Presumably, that person should be able to give a valid power of attorney on a day when he or she is capable. Having said that, anyone who knows about the individual's condition might be very nervous about acting as a witness for that power of attorney and might be well advised not to do so because of personal liability concerns. The reason is that if you know a person is occasionally incapable, how can you say, as required by subsection 10(2), that you have no reason to believe that he or she is incapable?

The unfortunate result of all this can be delays in the execution of an important document, excessive costs. I as a lawyer, for example, am often required to cart an articling student or another lawyer to a patient's home or hospital to have these documents signed. Even more problematic perhaps are all those powers of attorney that may have been executed without complying, perhaps unknowingly, with the requirements of the Substitute Decisions Act and which may not technically be valid.

In view of this, the changes to the witness attestation requirements I think are very well advised.

There is one other issue that I want to raise with you that is not dealt with in my paper. It because a client yet again, yesterday, raised it with me. The Substitute Decisions Act imposes a number of soft duties on attorneys. That's under section 32. For example, you have a duty to try and foster regular personal contact between the incapable person and supportive family members and friends of the incapable person, you have a duty to consult from time to time with supportive family members and friends, and there is a standard of care that attorneys must comply with. These are just a few.

These duties and standards of care are based upon assumptions about family units and relationships that may be entirely inappropriate and often really are. What happens typically is that the client will come to me, and I'll give you one example. A couple will come in and they'll say: "We have five children, two are straight as an arrow. Of the other three, one is a spendthrift, one is an alcoholic and then there's Suzie, who makes trouble wherever she goes. We want to name our two kids who are as straight as an arrow as our attorneys and we want them to be able to have complete control over our affairs and not have to consult." When I tell them that they're going to have to consult periodically with Suzie, the alcoholic and the spendthrift, you can imagine that they will want me to put a provision in the document that permits them to opt out of that. They don't want to impose that obligation upon the two kids they trust.

Under the existing act you can't do that, and I think there should be a provision that permits individuals to opt out and set their own standards, set their own duties. If I'm capable, I should be able to decide who my attorney will be and the standard to which he or she shall be held in terms of acting and the powers he or she has as well as the duties. At the moment, you can't. That's quite different from the law that exists when I'm appointing my own attorney under a will or if I'm establishing a trust and naming it as a trustee; I can certainly do all of those things. Why should it be different when it comes to an attorney?

Mr Chairman, those are my submissions.

Mrs Caplan: Thank you very much for a thoughtful brief. On the last point that you made, in fact the existing legislation does not permit a capable person to formally appoint someone to act on their behalf, but in practice that happens every day. I think most providers will respect the fact that an individual will say, "My daughter knows what I want; listen to her," and the provider will say to the individual, "Are you sure?" but as long as he's satisfied that those are the wishes of the patient. Do you see a problem with that? Do you really think a statutory requirement that would allow that to be formalized?

Ms Thériault: I'm not sure we're talking about the same thing. Are you talking about the soft duties that I was dealing with?

Mrs Caplan: Yes.

Ms Thériault: Those are duties that are imposed by law, and clients who have the biggest problem with them are the clients who are thinking about their financial affairs.

Mrs Caplan: I'm talking about personal care decisions.

Ms Thériault: Similar duties are imposed in the personal care context, there's no doubt about it, but where I get the biggest complaint certainly is on the financial side.

Mrs Caplan: Could that not be satisfied with a power of attorney given, which is effective immediately now under continuing property?

Ms Thériault: If I give a power of attorney to my two children who are as straight as an arrow, my two children are subject to all those duties whether I want them to be subject to them or not. I don't have any option in that regard under the existing legislation.

Mrs Caplan: But under the existing legislation you also have the opportunity to instruct.

Ms Thériault: Certainly, as I understand it, the public guardian and trustee and a number of legal commentators have on occasion taken the position that they have some doubt as to whether you can opt out of those duties that are statutorily imposed.

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Mrs Caplan: Are you referring to Bill 19 or what's in place before Bill 19?

Ms Thériault: I'm referring to the Substitute Decisions Act as it now exists, and I don't believe that Bill 19 addresses this concern.

Mrs Caplan: It's my understanding, and I would like clarification from the ministry, that someone filling out a

power of attorney for property can make it as specific as they wish today, so effectively to opt out of those obligations. If that's not the case, then this should be amended to permit that. That is exactly the purpose of a power of attorney for property: to allow someone to give as much or as little authority while they are competent.

I've always told people to be very careful, when they write a power of attorney, not to state that it's only effective when you're incompetent, because then all of the capacity assessments are required. So make sure it's somebody that you trust, because it is effective immediately as long as it's in their hands.

Ms Thériault: When you're preparing a power of attorney, you have certain freedoms in terms of what you can put in the document. You can make it limited to certain property, you can make it applicable to all of your property, you can make it limited in terms of time, but my interpretation of the law, and certainly the interpretation that I've heard from many others who are legal experts in the area, is that you do not have the ability to opt out of those duties that I've just referred you to.

Mrs Caplan: I'd like some clarification from the ministry because I've been telling people they can; and I'm a lawmaker, therefore I think the law should reflect that, which lawmakers believe the law should do. If that's no the interpretation, then this legislation should be amended so that can occur. As far as I'm concerned, that is the entire duty of having a power of attorney, whether it is for personal care or property. Thank you for bringing that to our attention.

The Chair: Do we have somebody here from the ministry who can give us a quick answer? The point is that the presenter has implied that there are certain soft obligations of consulting with families by an attorney of property and whether or not the drawer or drafter of that power of attorney can instruct his attorney not to consult.

Ms Saara Chetner: Certainly Ms Thériault is correct that there have been many different interpretations about that. To my knowledge, there has been no judicial interpretation of the statute as to whether those public interest or balancing kinds of provisions, which are not about the legal authority of the attorney but rather about the attorney's process for decision-making—

The Chair: Excuse me, what is your opinion, or do you have one?

Ms Chetner: The provisions suggest that those are duties and that one cannot opt out of them—

The Chair: You agree with Mrs Thériault, then?

Ms Chetner: —though the grantor can certainly give guidance to the attorney as to how to carry them out, and many lawyers do counsel their clients to specify if they want consultation to occur in a certain manner or the degree to which consultation should occur, given the vagaries of family relationships.

Mrs Caplan: But what if in their instructions they write in that no consultation is required?

The Chair: I'm sorry, Mrs Caplan, we've got our answer. Mrs Caplan can further inform herself afterwards. We must proceed.

Mrs Caplan: —consent to the ability to say yes or no? I don't think she did.

The Chair: I thought she did.

Mrs Caplan: If someone writes it in their instructions, is there no requirement under the law for the consultation to take place? Is that valid?

Ms Chetner: The statute requires it.

Mrs Caplan: Would that override the statute?

Ms Chetner: I don't believe that it would.

Mr Marchese: Thank you, Ms Thériault, for your presentation. There are a number of concerns and I want to touch on some of them. You say that it's a positive development that we're repealing the Advocacy Act and that we're eliminating the mandatory rights advice. I don't see that as a positive development. I see that as a step backwards.

For me, it's a question of how we protect the rights of individuals who are vulnerable, be they people with disabilities or seniors who are frail, often, and very vulnerable in many situations. How to put systems in place to protect them is what concerns me, because where it works we don't have a problem; it's where it doesn't work that we have a serious concern. The March of Dimes and the Ontario Federation for Cerebral Palsy were here, talking about so many systemic problems that are found for which, unless we have people with authority to deal with them, those abuses continue to exist.

It's irrelevant that people say, "We care and we like advocacy, who doesn't like advocacy, and yes, those abuses shouldn't exist and we should deal with them," but if we don't have a system in place that advocates on behalf of these people generally and that has people with rights advice to deal with them and advocates to deal with them with right of entry, then some of those abuses continue to exist.

My concern in terms of what you speak about, the Advocacy Act, when you say variations in treatment or in a treatment setting are a positive change, is that a number of people have come in front of this committee who are advocating on behalf of vulnerable people who say that this is not such a positive change, necessarily, because people should be advised of their rights every step of the way.

I know that for the people you defend this is a positive change, but the clients and those who advocate on behalf of clients worry about that. They also worry about emergency treatment, for example, which I think you say is a positive change. But a number of people, including the March of Dimes, say that with respect to language and disability it may be a barrier, but people should have the right to be accommodated, that we should at least make an effort to find an interpreter. So where you find that as a positive change, those who defend the rights of individuals with disabilities and language problems say we should at least make an effort to accommodate that problem. If we haven't, it's a serious situation.

My concern is how we defend those rights at the other end, and you seem to have another concern at another end. Do you have suggestions on how we protect these very people who have vulnerabilities in systems, in service treatment areas and so on?

Ms Thériault: I want to answer by saying from the start that your comment initially, where the system works, is not a problem. It's where the system doesn't work that concerns us; those are the cases that concern us. I think the problem with the legislation is that it's based upon

the assumption that it doesn't work most of the time, so what you end up with is a system that's too intrusive, too cumbersome, too expensive and just too much.

In the emergency treatment situation that you gave, where the new legislation proposes that it be administered even though you don't have consent because you can't get it because of a language barrier, for example, you say that those people should be accommodated. I agree that yes, they should be accommodated, yes, we should try to find an interpreter, but at the end of the day, if the person's health is in danger, treatment should be able to be administered to that person. That person's health shouldn't be put at risk.

Mr Marchese: We agree.

Mr Klees: In Mr Marchese's philosophical soliloquy he made the point for the retention of this bureaucratic structure for advocacy, and I'm encouraged that you as a lawyer would come here and tell us that we don't need that kind of adversarial structure to solve many problems that aren't there. I appreciate your perspective that you brought to us.

I want to just address very briefly a point that you made on page 3 of your presentation where you ask the question about the health practitioner who remains unsure whether his component of a plan of treatment is covered. The intention under section 12 was that one health practitioner would be the lead person in approving and would also be responsible for ensuring that consent is obtained. I'm wondering, in light of the fact that you raised this, whether you feel that it is not clear enough as to what the intent is here.

Ms Thériault: That's right. I think the intention is clear, but I think there should be a companion amendment to the section that deals with liability of health care providers—that's section 27—to make it clear that that is in fact the case.

Mr John L. Parker (York East): Ms Thériault, I wouldn't want Mr Marchese to think that the subtlety of his language escaped my attention, so I just wanted to ask you, do you carry on an active practice of defending doctors as a litigant?

Ms Thériault: No, I don't.

Mr Parker: You're a wills and estates lawyer, as I understand it.

Ms Thériault: An estate and trust lawyer, yes.

Mr Parker: Are you here representing any particular client or client group?

Ms Thériault: No, I'm not.

Mr Parker: You are here in what capacity then?

Mr Parker: We've received deputations from a number of professionals who are knowledgeable in the field and we're very encouraged with the response we've received and very encouraged by your support today. Thank you very much.

The Chair: Thank you, Ms Thériault, for sharing your expertise with the committee. We appreciate it.

1030

LINDA DAVIS BONAR

The Chair: Our next submission is from Linda Davis Bonar. Welcome, Ms Davis Bonar. You have one half-hour and you can use that time as you see fit, and that includes any questions you might receive. Please proceed.

Ms Linda Davis Bonar: Thank you very much. I call my presentation "Dead People Can't Talk." I want to thank you for giving me this opportunity to express my opinion on advocacy. I'm here today to speak for all the people who did not have an advocate to help keep them alive. If I were not a strong survivor and self-advocate, I surely would not be alive today. Suicide and/or emotional abuse and neglect, followed by an actual domestic assault, were quite enough to make me want to give up. But I would not expose my children to any more of the cycle of abuse and I promised myself to do everything possible to empower all of us.

Recently, my close friend would have surely died within these past two weeks if I had not been there in the hospital with her almost 24 hours each day. Keeping her alive is costing lots of money, for dialysis three times a week and radiation treatments for lung cancer. A cardiac arrest from the kidney failure and/or suffocation on the blood vomit from the enlarging lung tumour would have been an easy reason to explain her possible death. We questioned everything the doctors and nurses said and did. It was obvious they did not expect her to live. No one knew she was not ready to give up, and I was there to make sure she had the best treatment and explanations. After the radiation treatments, we came home: alive, and very proud of it.

What was the bottom line? Why was I there with her most of the time? I feel it is money, as usual. I feel they wanted her to die.

I call this "Advocates Plus," because the real people who have helped me are few—very few. They went the extra mile for me. They validated and supported me when all appeared hopeless and impossible. They went way beyond the call of duty and really stuck their own necks out for me. They put me in contact with important players to access this intricate web of self-advocacy, especially in the government and different organizations. These are the advocates who helped me to get the supports that I needed.

In "Self-Advocacy and Proactive Thinking": I now am able to help advocate for vulnerable others. I do the same for them that I was given, to have the willpower to go on for a better life, and in doing so, they get the strength to keep on advocating for themselves. It is a chain reaction in the most positive and motivating way possible. When an empowered person with a disability supports their own fellow man and woman, it is conceivable that that vulnerable one that they can better their life also.

This is the main reason that we all need an independent support such as the Advocacy Commission in place. This guides others how to help and where to go. Finally, we were getting an effective and efficient force, and now our government wants to take this away from us. How can this be abandoned—like us?

This is "Life from the Other Side of the Fence." It could happen to any one of you, any day, at any moment. Today you are healthy and able-bodied, and tomorrow you could be in the disabled category. I have lived both places. I never imagined what it was really like. When I became disabled, there was no magic advocate who appeared to help me live this roller-coaster life. This myth that there is help for you out there must be dis-

persed. There is nothing. Bureaucrats appear callous and invalidating. A lot of lip-service gives way to waiting lists, no funding and all kinds of "Sorry, but not today." What we need are what I call advocrats, not bureaucrats.

Standing up for one's self does not mean physically being able to stand. It is speaking up for a person's right to a dignified and respected life. When will anyone have the right to live without fear as we are facing and challenging our new nothing that the government is presenting?

I ask: Open your hearts, open your minds, open your mouths and help. Actions speak the best. Give back our freedom. Advocacy must be top priority to be able to stay alive. Or will only the healthiest and wealthiest people be able to populate this so-called civilized country?

My little addition here is, "How dare I." This is just in personal experiences. How dare I not accept the crumbs handed out to me. How dare I challenge authority figures. How dare I want a happy home and life for my children. How dare I help vulnerable others encourage their lives out of intimidating conditions. How dare I believe I have rights to live as full a quality life as possible. And how dare I leave a relationship for the freedom of a peaceful and safe home of my own.

I have these rights to live my life in as positive a way as possible, as every one of you does. Let us all do what is right.

Thank you for listening.

The Vice-Chair (Mr Ron Johnson): Thank you very much for your presentation. We do have about six minutes per caucus and we'll start with the third party.

Interjection.

The Vice-Chair: Oh, did you? That's what the Chair-man had down here, so we'll start with you, if that's okay.

Mrs Boyd: All right. Thank you very much for coming today. It takes a lot of energy and a lot of courage to come and be public about very personal issues and I want to thank you for doing that.

One of the issues that we've been facing is this assumption that people who are in the disabled category, who have been labelled in one way or another, who come before this committee somehow are coming out of a special-interest focus. Somehow every time groups like the groups that spoke this morning or individuals like you come and talk about what the real experience is like, we get a sense that the government members seem to see that as a special-interest presentation. Mr Parker, just with the previous person, for example, said, "What is your interest here?" "Oh, well, I just represent health professionals and hospitals." That's not a special interest, but you're a special interest.

1040

Ms Davis Bonar: Yes.

Mrs Boyd: I guess one of the real issues in talking about the need for advocacy is exactly that, isn't it? Those who have wealth and power in our society, who have privilege and power in our society, are not seen as a special interest, but those who try to advocate for those who don't have that power and privilege are seen as being a special-interest group and therefore not quite as legitimate, somehow working out of a vested interest. Do

you want to comment on that? Because you watched that happen this morning. I'd be interested in your opinion.

Ms Davis Bonar: Yes, I did watch that happen, and it does seem like if you have money, you have power. People in power do get better service. It's the VIP or the—I call that the special-interest group more than myself. I feel that many times the best interests of the person are really not being taken into consideration at all.

The bottom line is usually money, time, energy, and after a person has been in a position for a while as the caregiver or professional, so to speak, there appears to be a type of callousness and a type of almost non-caring, just do it and get it done.

I feel it is just so intimidating and invalidating to the person that it makes you feel like, what's the sense? So in banding together, we are giving each other power. And I feel that there shouldn't really be a definite division between the able-bodied and disable-bodied because of just so recently being in the able-bodied community myself. I really can see it from both sides of the fence so much right now and I'm really appalled that I was suddenly put on the wrong side of the tracks.

Mrs Boyd: My daughter is going through the same thing. She was diagnosed with MS this summer, and she was just saying to me this week that it feels the same way for her, that here she was given a whole lot of credibility in terms of self-advocacy when she was an able-bodied person. As soon as she is not, then the situation becomes much more difficult.

One of the things you raise here is the value of the life of disabled people. We heard some shocking allegations that in fact there is pressure on people who are disabled in fact to agree to do-not-resuscitate orders when they go into the hospital for something totally other than their disability and that sort of thing. May I ask if you have any personal knowledge that that indeed does happen? Your story makes me think that you had a sense that there was a devaluation of your friend who you were advocating on behalf of. I'm curious as to whether you know yourself of instances where this has happened, where in fact either the person or a substitute decision-maker is in fact asked to sign an order like that.

Ms Davis Bonar: I certainly can't say that I can name a case or anything like that. I feel that it is really in my gut feeling that they would've surely let a person in her condition die, just by her appearance etc. That to me is not fair to base a judgement, an assessment of, is this person's quality of life worth it, so should we or shouldn't we do a costly treatment or whatever? That is not really what it's all about. It's about, do we want to be people? Do we want to be human? Do we want to live as a civilized world? And don't make assumptions on appearance, for sure.

Your question if I've seen anything in particular: I feel that an advocacy part, a person speaking there for the patient and with the patient and for their wishes, is extremely important, because the person lying in bed is not really heard. I was one of those people not really heard. One of the strongest reasons I'm here is because I've lived that side where I wasn't really heard, I wasn't listened to. I feel it's very important that this comes across, that

nothing should take place without there being some kind of knowledge of what's going on.

Mrs Boyd: If your friend had been ready, if your friend was in fact ready to die and was agreeing to that, you wouldn't have the same feeling, would you?

Ms Davis Bonar: I think there are phases you go through as well when you're told you're ill or when you're told this or that. So I don't fully understand that completely; I don't really know what I'd do.

Mrs Boyd: But if in fact you knew that your condition was terminal and that you were in a palliative stage? Part of our problem, you see, is that we have to see both sides of this, and part of the advocacy issue is seeing both sides. There are people who are in end stage of life who want the right to say: "I want to refuse any further treatment. I want to have withdrawal of treatment." So we have people coming in front of us on both sides, and part of the challenge for us as lawmakers is to make a law that really respects the wishes and the particular circumstances of each individual.

Mr Klees: Thank you very much for your very thoughtful presentation. In your second-to-last line, you say, "Let us all do what is right." I know that every one of us in this room, every member of this committee wants exactly that. We want to do what is right, and we want to do what is right for everyone in the province, particularly the vulnerable, because that's what this legislation deals with. There are, obviously, differences in terms of perhaps how we feel we should get there.

I just want to share with you, and this is not news, that we are facing a very difficult problem in this province. You put your finger on it, and that is money. Unfortunately, there are some restrictions that our financial circumstances place on us in terms of how we can go about solving these problems. So at the outset I just want to assure you that we all have a common objective here, and that is to ensure that the right thing is done. In fact, as a member of the Legislature, when the Legislature sits, in our daily prayers the Speaker reads a prayer and one of the lines in that prayer is, "Help us to use power wisely and well." I think that guides all of us, and that's certainly our hope.

You made another comment in your submission, and that is that bureaucrats many times appear callous and invalidating. That also has been my experience. In the very short time that I've been in this position, many times I've had complaints from people who feel that the bureaucracy just isn't responding, that the animal of government, if I can put it that way, just is very callous to their needs. I think that too is one of the things that we're trying to achieve, that we don't create another level of government by trying to help people, that we try to keep this as human as possible and try to keep that human touch to the issue of advocacy. You're doing that very well yourself in terms of your personal initiative by being here and obviously the work that you're doing in the community.

We recognize that we can't just allow that to happen, that government has a role to play, whether that's in education or coordinating, and we know that some resources have to be put to that. I just want to assure you

that we are willing to do that, but we want to do it in the most effective way possible.

We have been accused in the past of not consulting, but that's why we're here now. The reason that we're here and the reason for these public hearings is to get input from people like yourself as to what the best model is. Within the limited resources we have, what is the best model that we can put forward to help people?

1050

I want to thank you for coming forward, for bringing some of these issues to our attention. Also, to yourself and those you represent, we want the message to be very clear that we are there to help, that we don't expect it to just evolve, that there is a role for us to play. But that's what we're here to find out, and had we come forward again saying, "We're taking this away and here's what we're replacing it with," I don't believe that would have been doing credit to the process. The reason that we don't have anything right now in a package to say, "This is what it's going to be," is because we wanted to hear from you and we wanted to hear from other people over the last month in terms of what that system should look like, how it can best be provided in the province of Ontario.

Thank you and I trust that you'll be available to us over the next number of weeks as well to perhaps get some further input.

Ms Davis Bonar: Do you have a question for me?

Mr Klees: I wanted to first of all make that statement, because I think to a large degree what we're trying to do here has been in some cases misrepresented and in many cases perhaps misunderstood. It's important that that is set straight for the record. I give you an opportunity, if there is any more time, to make any further comments.

Ms Davis Bonar: I appreciate what you're saying and I appreciate your comments to me. I still feel I'm getting lip-service because nobody knows what it's really like to be on the other side. The only interest that I have in coming forward is so that everybody can see that we're all the same and that in making decisions you are going to be making—and I hope that they are going to be positive ones that are going to be helping vulnerable people—I hope these things aren't taken away from us, what we've gained. My question to you is, will we be getting feedback? Will we be getting answers? Will we be questioned again before you do final acts and bills again?

Mr Klees: The reason that I wanted to just connect with you on this, to ask if you would be available, is that we would like to be in touch with you. Certainly we're holding meetings now with stakeholder groups, and there will be responses to the input that we've had here and ongoing consultations, so we want this to be a very meaningful process. I fully understand your concern about lip-service, because there's a great deal of cynicism about the political process and about government. We have reason to be cynical, because governments have disappointed us, governments of all stripes over the past. I guess what we have to do now is say, "Look, we've had enough of that and it's time to be positive and it's time to make a difference."

Mrs Caplan: During the past election, when your Conservative candidate knocked on your door, did he or she discuss this issue with you?

Ms Davis Bonar: I cannot say that anyone did in particular, no.

Mrs Caplan: Because what is becoming clear is that that's what this government believes was consultation prior to the tabling of Bill 19. I've been asking all of the major organizations and groups that have traditionally been involved in consultation prior to the tabling of legislation, and what's clear is that there were very inadequate discussions with those groups which would expect to be involved with a consultation with the ministers. Frankly, I take no comfort either when I hear that they talked to 20,000 people, or knocked on 20,000 doors, because in my own experience in my own riding I can't think of more than one person who raised this issue in the hierarchy of concerns when I knocked on their door.

The reason I'm making that point is that I think that this is about values, and the values that society places on these issues frequently don't pierce the consciousness until you're in the position which many of us have difficulty imagining or contemplating, although I did have a personal experience 11 years ago. My father had been diagnosed with terminal bone cancer and began his chemotherapy treatment. He had a massive coronary with extensive brain damage. They had no idea how long in fact he'd been unconscious before they found him and in fact he was resuscitated. The reaction of the family was, "Why did you do that?" In fact, there had been no communication or discussion about wishes upon admission. I think we've made some progress in the 11 years, but it certainly isn't consistent across this province, in seeking wishes. What I hope this legislation will do is be amended to encourage those communications to take place, because they are not consistent.

One of the concerns I have and I'd ask you to comment on is that there is no obligation in this legislation for a provider of service to inform a patient or client that they believe they do not understand and appreciate the consequences of the proposed treatment and are therefore calling in a substitute decision-maker; there's no obligation on the part of the substitute decision-maker to inform the individual; there's no obligation to inform the individual that they can object or that they can make an application to the Consent and Capacity Board. So they don't even know or have a right to be told under this legislation. Then, to compound everything, the provider and the substitute decision-maker have total freedom from liability through the courts.

Mrs Johns said to a proposal I made earlier that said, "Maybe you should only give the freedom from liability if they are satisfied that the person is aware of their rights," that might lead to excessive court challenges. That question sort of alarms me, because it would suggest in fact that this government, notwithstanding the very fine words from Mr Klees, just doesn't get it. So I wonder if you would like to comment on the proposal that if you're not going to have an enforcement model up front to require people to be told of their rights, do you think it's reasonable to say you don't get the liability protection unless you are satisfied yourself that people are aware of their rights?

Ms Davis Bonar: My personal opinion is that I feel that a person should be liable if they make a decision like

that. Yes, I really feel they should be liable, because they should not make a decision at all if they really don't know what the person wants. That's basically what I've got to say. I realize I'm probably out of time.

Mr Klees: Mr Chairman, could I clarify something? I don't want to take anyone's time.

The Vice-Chair: Very, very quickly.

Mr Klees: I think Mrs Caplan made reference to a comment that Mrs Johns made and I don't think that's what Mrs Johns said. I think Mrs Johns made the point that your suggestion that we should leave it open to litigation, liability—

Mrs Caplan: Would clog up the courts.

Mr Klees: Exactly, that that may be too litigious an issue. I wanted to clarify that. That's not the same as the message that came out.

Mrs Caplan: Check the Hansard.

The Vice-Chair: Thank you, Mr Klees. On behalf of the committee, I want to thank both of you for your presentation today.

CANADIAN MENTAL HEALTH ASSOCIATION METROPOLITAN TORONTO BRANCH

The Vice-Chair: The next presenter will be Steve Lurie from the Canadian Mental Health Association, Metropolitan Toronto branch. Good morning, Mr Lurie.

Mr Steve Lurie: I want to thank the committee for agreeing to hear me. I want to say at the outset that our branch supports the submission of the Canadian Mental Health Association, Ontario division, so I won't be going over ground that they covered in their presentation to you. What I would like to do is spend some time looking at how the discussions about advocacy have taken place over the last 17 years. I've been privileged to be involved in the mental health field beginning in 1975, so I've been able to see a number of provincial governments attempt to grapple with this issue. I'd like to talk a little bit about the patterns I've observed in the debate, take you through some landmark pieces of the debate and then finish with some recommendations about how we could go about building an advocacy system.

1100

Just to finalize a few remarks about my own background, I've been with the Canadian Mental Health Association since 1975. In the early 1980s, I was able to work with Health Minister Grossman around the establishment of the provincial psychiatric patient advocate program. In 1987, I had the supreme honour of being able to be part of Father Sean O'Sullivan's review of advocacy, and also worked with Minister Caplan on the Graham report. In 1991 and 1992, I was appointed on a secondment basis as the coordinator of mental health and addictions for the Ministry of Health, and since 1993 I've been a member of the provincial advisory committee on mental health reform. I guess if I'm not a survivor of the advocacy debates, I'm probably a veteran.

I would start off by saying that so much of the debate has been framed in terms of absolutes. No matter what side of the issue you're on, people have a sense of their truth is the truth and there's only one way to do this. I hope that as we try and develop an advocacy system for

Ontario, we recognize that as Father O'Sullivan said in 1987, and it's hard to believe that it's almost 10 years since he wrote his report, we really do need to foster a mixed system of advocacy in this province.

Let me begin by talking about the Alviani inquest, because that's when I first became aware of the need for advocacy. Alviani was a psychiatric patient—today he'd be called a consumer survivor—who was medicated on haloperidol and valium and died in the Queen Street Mental Health Centre. There was no formal advocacy system in those days, but something emerged from the community, an organization known as the Coalition on Psychiatric Services, which was made up of CMHA, ARCH, some consumer advocates and the Patients' Rights Organization.

Despite some real differences in our groups about how we would run the mental health system if we were allowed to run it, we were able to find common ground around the need for advocacy and the need, in particular, for systemic advocacy. One of the things we found was that despite the legislation which talked about detaining and restraining under the Mental Health Act, there was no clear agreement, and there were a multiplicity of hospital bylaws and government policies that covered the administration of restraint when somebody was involuntarily hospitalized.

This suggested there was a need to have an overview, because what goes on in the general hospitals is different from what goes on in the psychiatric hospitals and every general hospital is different. As well, we did a survey of people at the Queen Street Mental Health Centre at the time and found there were numerous instances of a lack of informed consent to the administration of treatment.

This small group didn't have any money from anybody, so we just kept meeting on our own and we wrote lots of letters to the government of the day, and we had some meetings with Dr Boyd Suttie, who was the ADM for mental health at the time. I'd like to believe that some of the pressures this group were able to bring to bear got Minister Grossman thinking about the need for a psychiatric patient advocate program. Certainly, within a few years that was announced, as well as the strengthening of the community advisory boards in the provincial psychiatric hospitals, which again suggests there's no one way to do this but at least we began to evolve towards an advocacy system.

The year 1983 saw the establishment of the Psychiatric Patient Advocate Office. At the time there was extreme controversy over what model this office should take, whether it should be wholly independent of government, or in a sense owned by the government. There was a real concern by some that having it as part of the Ministry of Health would compromise its ability, that it would be unable to do the right thing, that the ministry would stop it from being effective. If you review the history—I know the PPAO has made a presentation here—you'll see that was not the case. In the first year, there were 12,000 complaints and 30 instances of problems. I remember being on the Ontario Association of Professional Social Workers at the time talking to my provincial colleagues who had some real concerns about some of the institutional resistance to that program, but none the less we've

got a success that's now almost 15 years old and it would be a shame to lose that success.

Once again, as we moved advocacy into one set of institutions, we found that despite the polarization of the debate, as long as you put something in place it would work. That wasn't to say it was haphazard. There was a lot of planning that went into it and I would suggest that the current government, if they wish to review the experience, Dr Manson did a review in the 1980s of the patient advocate program, Mary Beth Valentine is still around, Ty Turner is still around. So some of the people who were involved with the establishment of that program and remember its early years I think can provide some very good guidance as to how that can continue and how its mandate should be expanded.

In 1987 the O'Sullivan review—I want to use part of my time to read some of what Father O'Sullivan had to say into the record because I think we too often forget the advice he gave us. In particular, I remember having a discussion with Father O'Sullivan early on in the process because one of the belief systems that the government of the day had when that committee was set up was that the professionals and the government and the consumers could never agree, so they actually put us in three separate groups and asked Father O'Sullivan to play Solomon.

I said to Father O'Sullivan: "Look, why don't we try and bring the three groups together. Let's see if there is any common ground." He agreed to do this. We didn't go on an expensive retreat. We went to a crowded room at OISE. It was a real opportunity to see Sean in action and it was one of the most awe-inspiring events of my career. I will never forget it. He stood up at the front of the room and he said: "Now we're all here. We all have different viewpoints, but if we had to create the ideal advocacy system, what would it be, everything from how would you get the information out about it to what would it do?"

He literally allowed people, with very little discussion on his part—he simply asked probing questions—to spend about two and a half hours designing an advocacy system, and the walls of OISE were papered with flip charts. Then when this report came out some months later, I realized that what he done was he had found common ground. I would like to take some opportunity to remind you of what he said in 1987:

"Ontario needs advocacy. More particularly, we, as Ontarians, need to be advocates. Most of us already are, but we can do more. If we are to improve our society, we must. Primary responsibility for advocacy must remain with us as individual citizens, but primary responsibility for advocacy education and the development and support of advocacy services is the proper role of government."

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Then he goes on to define advocacy: "Social advocacy entails speaking or pleading on behalf of others with vigour, vehemence and commitment, and we've seen a lot of vehemence and we've also seen a lot of commitment and vigour but those are not things we should be afraid of. Using non-legalistic resources, a social advocate, unlike a legal advocate, does not directly invoke or participate in the legal process to obtain the desired result.

"Social advocacy includes the following four basic principles: Advocacy must be client-directed or instruction-based. Advocacy must be administratively and fiscally independent of the human service delivery system. It must be accessible and it's not necessarily adversarial.

"Major findings"—you'll see that I've included these as an appendix to my submission—"The evidence presented to the review identified a clear need for a coordinated and effective advocacy system in Ontario.

"Statistics indicate that there are potentially one million or more vulnerable adults...living in Ontario at the present time who could have need of advocacy." If we look at the impact of the aging population in the time since, there are probably more people now.

Most importantly, "Ontario has a mixture of fragmented advocacy services which are only available to a limited number of vulnerable adults....

"The present system lacks a clear mandate to provide advocacy services as there are no uniform standards of service or training programs for advocates" and advocates "are hampered by the lack of a clear right of access to care facilities, clients and clients' records.

"The gaps in the present system produce inequities and discrimination....

"Other shortcomings...include: underfunding; lack of resources; excessive workloads; lack of direction and support; lack of supervision; and limited accountability.

"There are alarming numbers of vulnerable adults who have been abandoned by family and friends in long-term-care facilities and in the community."

The advocacy review was provided with about three binders, each of which totalled about 200 pages of submissions from people across the province at the time, and the range of problems identified and the range of issues identified was really quite astounding.

It was everything from people who had trouble with their family doctor, to people who had trouble with hospitals, to people who had trouble in the rest homes, to people who had trouble with community services.

But when Father O'Sullivan said there was a real need, he was just reflecting what he heard from the community. This was not invented. It was not a notion of "We better do something to look correct here." There were heartfelt submissions, some of them on scraps of paper that came in to the commission. I would suggest that the committee refer to the archives, because there's some profound evidence that not much has changed.

What O'Sullivan did was he reviewed five advocacy models and came up with a mixed model of advocacy, and I won't go into detail except to say that there are a number of ways one could provide advocacy, but they all have shortcomings. You can go with an ombudsman program, you can go with a volunteer-based program, but what O'Sullivan came up with is he said we need a shared advocacy model, which means that we have to share the "responsibility for the delivery of advocacy services among government, volunteers and community groups," and that—I think this is prophetic—"it is an evolutionary/slow growth model which draws upon the successful experience"—I guess times may have changed his wording now on the Ontario legal aid plan—"by encouraging community groups to develop advocacy

service programs to meet the particular needs of their community and to apply for funding these programs.”

The bias here was essentially to have a community-based advocacy system, and we have to figure out how to do that and we have to put one in place.

He goes on to say that it should report to the Legislature through a standing committee or to the Attorney General.

Just to review what he was saying in terms of the themes, the O'Sullivan review was linked to legislative changes regarding substitute decisions. There was a debate over service provider conflict of interest and there was debate over the differences between advocacy and case management coordination. These debates will still continue. But many submissions detailed the suffering and the need for a mixed system of advocacy was identified.

Moving on to the 1991 report on community mental health legislation, we saw there for the first time in the mental health field an exceptionally strong consumer voice which articulated the needs to enshrine rights in legislation, and when the previous administration, government, announced the three acts you're now amending, some of these issues were taken off the legislative table of the Ministry of Health because rights were articulated, and there was going to be some way to enforce rights.

One of the things this report talked about is it also identified the need for dispute resolution mechanisms and provisions for ministerial action in cases of abuse. I've attached some excerpts from that report in the appendix of my submission.

I draw your attention to recommendation 3, “The legislation should include a statement of rights...the right to be accorded dignity and respect...least restrictive environment...right to receive services in one's own community” etc

The subcommittee recommends the government implement an advocacy scheme with haste and emphasize self-advocacy, development of advocacy skills by consumers. The legislation should require service providers operate services in accordance with principles enshrined in the legislation, that there be a complaint and appeal process and, finally, that the ministry have the ability to move into all instances where abuse or neglect is suspected, and if necessary, inspect, and following that being able to take over the operations. They go on to recommend the development of local dispute resolution networks.

If we look at the past period that began from 1992 to the present with the Advocacy Commission, again we see a linkage to legislative changes regarding consent and substitute decision. Again, a strong consumer voice; this time, cross-disability.

But limitations on service provider and family involvement were debated, and I don't think effectively resolved, and the conflict over the Psychiatric Patient Advocacy Office transfer. Then on the positive side, some tools for developing volunteer advocacy and a study that identified gaps in service, but the commission has ended before the services were developed and evaluated.

Now we have the current bill, which is again linked to current changes regarding consent and substitute decisions. Some provisions appear to remove consumer rights

and restore family and health practitioner rights, and there is no legislated advocacy contemplated.

I want to summarize now by setting out some observations and recommendations, and you'll find those on page 2 of my submission. I know you've received a lot of detailed submissions. I thought if I could do it in two pages, maybe the committee would be able to remember what I had to say.

(1) There continues to be a need for a mixed system of advocacy, and I think I've identified that in my presentation to you.

(2) Internal advocacy should be fostered through encouraging the development of internal mechanisms in all health and social services.

I've appended for you a complaints procedure developed by my own organization where we consulted with consumers, and the board of directors took on its responsibility to make sure that if people feel we act inappropriately they have an ability to contest that action. Again, you want a non-bureaucratic approach that starts with the person and the person who they complain about, trying to bring them together, and then if all else fails, bring in additional supports all the way up the line.

But sometimes even in an organization where there's an enlightened approach to consumer involvement and dispute resolution, for a variety of reasons, people will need to be able to go outside. So just having an ability and a given hospital program or a community program and saying we can stop there isn't good enough. There needs to be an ability, at a systems level, to intervene and try and rectify disputes.

That also means there may be legislation necessary mandating the reporting of abuse and the protection of those who report it.

(3) Also at the local level, as I mentioned, there needs to be a dispute resolution mechanism. These can keep you out of court and save money, but families, for example, often simply need to talk to a department of psychiatry about why their relative didn't get in. We don't have the capacity to allow for easy access when somebody has a complaint about how the system is performing.

(4) There needs to be a capacity to investigate and address systemic issues at the provincial level, because we do have to look at both the provincial view and the local view, and allowing simply for individual organizations or a local dispute resolution at the community level doesn't allow for the province to say: “What are the themes here? Are there some bigger issues than the local community or the local agency can resolve?”

If you look at how the Ombudsman program has functioned, and that's a possibility to look at in terms of a model, at least they're able to draw to the attention of an operating or funding ministry problems in policy and problems in practice. They can't enforce that the ministry act but they have that responsibility of saying, “This has gone wrong,” and they talk to the deputy minister or they issue a report saying, “You've got to rectify these things.” I think the government has to have a capacity for somebody to say, “If you're funding the system, you're responsible for it.” It's a shared responsibility with those of us who work in it.

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(5) An advocacy system costs less than the failure to provide it. I have looked at the most recent estimates on what we spend on health care. We spend about \$17 billion a year in this province, and if you add to it the spending on personal social services in Community and Social Services, you get about an \$18-billion expenditure.

I guess the question would be, if you spent \$1 on services, how can we not afford to spend one cent of that dollar on advocacy? While there was an announcement to cut the commission funding from \$18 million, all it represented was 1% of the total that we spend on human services. Now, I'm not sure that's the best figure, but it seems to me, as Father O'Sullivan said to us, we have to acknowledge the need to protect our vulnerable citizens and protect their rights.

Unfortunately, not having a mixed system of advocacy and an organized system of advocacy, it may have us spending more in the long run. If cases go to courts or if we have to have commissions or inquests, these are costly public endeavours.

(6) Rights advice must be available under the Mental Health Act, consent and substitute decisions legislation. I found that the current legislation suggests that it may be available; the minister may provide it. It seems to me that's a must.

(7) The functions now provided by the provincial Psychiatric Patient Advocacy Office need to be maintained and expanded to cover general, specialty hospitals and community programs. I would raise with the committee that there is now discussion in this province about the potential of divesting provincial psychiatric hospitals. If that were to occur, we still would need to find a way to protect the patient advocacy program or those functions.

That brings me to the end of my presentation. I hope all parties on this committee can unite in the need for advocacy services and to get a better organized system than we now have. I'd be happy to answer any questions you may have.

Mr Ron Johnson: I'll be brief. Actually I don't have a question, but there are a few comments that I do want to make.

I want to thank you for your presentation. It's clear that a great deal of thought went into it, in respect especially to your recommendations and I can tell you that we are going to look very closely at them.

At the outset, of course, I want to say that we take advocacy very seriously. We just differ with the approach of the previous government. You've indicated through a number of things you've said—you talked about the O'Sullivan report and how it talked about that it had to be the grass-roots education and support the government's role. You talked about it being community-based, a non-bureaucratic approach. You talk about making sure there's some sort of system in place for rectifying disputes, that kind of thing, and that's the kind of information we really want to get from you.

Particularly, you've said that O'Sullivan also stated that the heart and soul of advocacy services will depend upon caring volunteers. I want you to understand that's what we really want to foster. That's what we want to

develop, community-based advocacy service based on the good work of volunteers and organizations that are already in place, doing advocacy. We see ourselves in an education training possibility and coordinating that kind of advocacy system.

I want to thank you for your presentation. It was very insightful and your recommendations are very good.

Mr John Hastings (Etobicoke-Rexdale): Sir, what would be your reaction to an accreditation sort of process in terms of advocacy that the cerebral palsy coordinator spoke about earlier this morning and tie that to financial incentives?

Mr Lurie: I think that's an interesting model that needs to be looked at. The issue is, how do you guarantee quality and how do you guarantee similarity of service regardless of who provides it? I think there are a variety of models. Accreditation is one of them that bears consideration.

It seems to me that it would be an interesting initiative to bring together the various groups who are now involved in client-based advocacy and see if they could develop a set of standards. Then the issue again is whether the profession or the group polices itself or whether somebody else has to do it, and again there will be debates on all sides of the issue. I think what O'Sullivan identified, and I don't think the situation's changed, there is a need for some standardization.

Mrs Caplan: I would suggest that when you use the term "standardization," that is why there's a need for coordination so that you have that standardization. A lot of people don't understand the language that we use, Steve.

The question that I have for you is: Prior to the tabling of Bill 19, was the Canadian Mental Health Association, or you, given all of your past experience, consulted by the Minister of Health or the Attorney General for advice before they tabled Bill 19?

Mr Lurie: I understand that our provincial office, because they already had a seat on the service provider and family committee of the commission, were invited to a meeting to discuss possible changes, but I wasn't contacted.

Mrs Caplan: It's my understanding in the recommendations that you've made, where you talk about rights advice, that rights advice will be continued under the Mental Health Act, although this legislation doesn't mention the Psychiatric Patient Advocate Office and the intention to maintain that for mental health facilities, but I hope they will take your recommendation that the PPAO—which I think should be enshrined in legislation now. I think it has proven itself and I think its mandate should be expanded to include the specialty hospitals, community hospitals, as well as community programs.

I'm also proposing that under the Mental Health Act, when they talk about the "psych facility," that it would facilitate that if that was changed to "psych program." That might cause the need for some other amendments under the Mental Health Act, but do you think if we're going to talk about the shift to community, we should change this notion that psych services are provided in a facility?

Mr Lurie: Yes, especially with the shift to even psychiatric hospitals and general hospitals providing services in the community.

But it also raises the whole question of governance of the mental health system, and it seems to me that while we might do some things to facilitate advocacy, and certainly one support would be ensuring, as Manson recommended, I guess, in 1987, that the mandate of the PPAO at a minimum is expanded to cover the whole range of mental health programs.

I think at the same time we also want to encourage individual programs and institutions to develop their own dispute resolution mechanisms as well, yes.

Mrs Caplan: Those two objectives are not inconsistent.

Mr Lurie: Right.

Mrs Boyd: Thank you very much for your presentation. It's really very good for us to be reminded of some of the history and in fact, as I think you will agree, the development of a mixed or shared advocacy system was exactly what was intended by the Advocacy Commission creation because one of their tasks, as you point out, was that they were to give those tools for developing voluntary activity and in fact fostering that education around both the rights and the responsibilities of everyone involved in the community, and they weren't given that opportunity to show what they could do.

When people say the Advocacy Commission failed, they never got the opportunity to do that. All they got to do for a very limited period of time has been to provide the rights advice. Is that not the case?

Mr Lurie: Yes. There are two papers that they've now put out. One is the study of gaps and the other one is a model for volunteer development, which I think we should proceed with.

I think it is unfortunate to close something down before it has an opportunity to demonstrate its worth. Despite some of the problems that occurred with the commission, the fact that they did have a service provider and family committee, that they were starting to engage the field and I think the missing piece would have been to build in an evaluative mechanism.

I think three years from now, if they'd have been allowed to continue, we would have been likely saying, "Here are ways that we can improve this service and here are things that we better change," because there undoubtedly would have been problems and I guess I'm disappointed that we may have to start at the beginning all over again.

Mrs Boyd: The proposal that the commission has made around how to carry on with this coordinating educational effort, have you read it and are you in favour of it?

Mr Lurie: It's a good idea. I think at the same time there has been a bit of a polarization at the commission level around the notion that the disabled community itself, while I agree they are majority stakeholders—but the assumption that just because you work for a service provider, you have no understanding of issues, and if anything, I take that as a responsibility to make sure that my organization provides decent service to people. I want to know when there are problems and I want to be able to ensure that they get corrected.

I think as this thing evolves—and that's where I tried to compare the notion of the standalone disability consumer rights and advocacy of O'Sullivan, contrasting it with the 1991 report on community mental health legislation, which said it's not either/or, it's both. So I would hope that as we evolve, we have a system that encourages service providers to make sure that their services are accessible and that they're accountable and that at the same time there are abilities for people who can't use or who feel afraid of using a service provider mechanism, that they've got another option.

The Chair: Thank you, sir, for your practical experience and sharing that with the committee.

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PERSONS UNITED FOR SELF-HELP IN SOUTH CENTRAL ONTARIO

The Chair: The next submission is Persons United for Self-Help in South Central Ontario; Bill Gallagher, chair. Good morning, sir. Does south central Ontario include my riding of Cambridge?

Mr Bill Gallagher: It sure does.

The decisions made to repeal, amend and revise the Advocacy Act, the Consent to Treatment Act and the Substitute Decisions Act are extremely damaging to the disabled community in the province of Ontario. The fact this government has chosen to totally isolate and intimidate the disabled community from being equal citizens with equal rights and access to services is immoral, unethical and illegal.

The Decade of the Disabled—and here we go again—the Father O'Sullivan report and the Kendall inquiry report have all been thrown aside. The recommendations of former Conservative, Liberal and New Democratic governments have been abandoned, all without consultation with those who are going to suffer the most, and it poses a big question: Why?

Statistics Canada tells us by the year 2000 we will have 20% of our population who will suffer some kind of disability; currently we're at approximately 18%. With Ontario's population standing at 11,162,500, that means over two million Ontarians have some form of disability and approximately 300,000 of us suffer seriously from a physical and/or mental disability.

This misguidance in the passage of Bill 19 will confirm us as non-status persons, residents, leaving us without proper representation and protection of our rights. You are leaving us totally exposed to the whims of others—you've heard that in the two previous discussions that I've heard—without the right to be heard. That is a violation of each and every section of human rights in this country.

Self-determination and independence are fundamental rights of us all, yet many of us need assistance in expressing our concerns. You are taking that away from us entirely in one sentence, "The Advocacy Act...is repealed." This 30 pages goes along with 15 to 20, and in some cases 30, years of hard work, frustration and being fragmented, as is listed in the O'Sullivan report and the document my predecessor just listed. You have disposed of us in just one sentence.

Where is the respect? How little have we become? The last time this manner of legislation was recorded was in Germany, for which many Canadians gave their lives to protect us from suppression. The limitations of communism have been restricted severely in the last five years, yet you wish to take every person with a disability back to a suppressionist state.

Advocacy is needed for both the individual and for the systems which govern us. Are we to go back to being subjected to physical abuse, unclean and unsanitary premises, dealing with cockroach infestations, being told this squalid way is the only way your government says we can live? Are we to be subjected to being restrained in our beds and/or our wheelchairs without having the freedom to hear the birds or experience fresh air? Does the fact we suffer from multiple sclerosis, muscular dystrophy, arthritis or any other disability mean we have lost the ability to be productive human beings? I think not.

Advocacy must be practised in all its forms, not be directed by those who abuse and intimidate us, which restricts our opportunities to be productive members of society. Individuals must have the right to be seen and heard when they wish to. Each and every circumstance that follows below as a systemic problem results in many thousands of individual needs for advocacy. I'm going to repeat that because this is important: Every circumstance listed below as a systemic problem results in many thousands of individual needs for advocacy.

Systemic advocacy is needed to correct the inequities within the legislation and regulations currently in use. Many of the individual needs for advocacy would be eliminated, creating considerably less cost. Many of these corrections, if implemented, would avoid duplications in the overall picture—and they are many. The barriers and obstructions placed in front of all disabled persons are far too massive, degrading and abusive. If you were to ask any disabled person living within the limits of the Canada pension plan, family benefits and general welfare programs what they fear most, it is the abuse taken daily—I repeat, daily—in the threatening of loss of services if they stand up and complain and/or demand their rights. Why should this be acceptable at any level?

Why waste constant reviews of people who have a permanent disability, requiring constant visits to physicians? That alone costs the province overuse of the OHIP funding and excessive demands on the transportation system, just to justify the need for more staff. The fear and loss of self-esteem, dignity and personal pride are heavy tolls for this attitude. Is it really necessary for us to grovel and cower to the workers? And understand please, that is a true circumstance. We have to beg for our rights to access programs that are legally ours. How many of you would subject yourselves and your families to this demeaning, beguiling attitude?

Why do we have medical review boards with members, who don't have to be physicians and are not required to have specialist experience, allowed to overrule decisions that the specialists have already discovered and reported upon? OHIP has already covered the cost of making the decision that a disability has been proven. Why then have civil servants review same and deny pensions, then pass

the decision along to a further unqualified review panel at the cost of over \$70 an hour for each panellist?

Inequities of service vary from region to region, worker to worker and, far too often, from case to case with the same worker. What some are being covered for legally is being denied others. Why is that considered legal, ethical and/or moral? Are not all of us supposed to be equal?

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Income barriers are also very significant. Discrimination by the province to those who are covered by CPP or private pensions in our housing costs is rampant. We are told by family benefits we must apply for CPP if we have worked long enough to merit it. When we receive it, and if it exceeds FBA's monthly allowance, a higher rate of rent is charged to those on housing subsidy. My own personal experience is a good example. My income from family benefits totalled \$688 monthly and I was charged \$92 rent. When I received my CPP, my rental increase was more than the funding increase that I received from CPP. Today, I receive \$793 CPP—there might be a minor fluctuation of about \$10 in there with a cheque that I received since this was printed—and FBA and am now being charged \$235 rent for the same apartment. The province has received the benefit of my CPP payments, yet penalizes me 255% more in rent, a \$143 rent increase with an income increase of only \$105. Refugees and workers' compensation clients with higher incomes are charged less than \$100 for the same accommodation in my same apartment. I have requested review and am told that's the way it is.

This is not an isolated case. We have seen incomes be reduced by as little as one cent, one-cent-cheque deductions because someone has earned interest in that amount. The cost of making the changes, plus the recording of it all, far exceeds the benefits. Errors made in payments calculated by the FBA and GWA staff are repeatedly taken off our meagre incomes. There is no detailed explanation given. When you do question a decision, you get a very short, terse answer, along with a notice that to follow this further, you'll have to apply to the Social Assistance Review Board. I must tell you, this is absolutely automatic. You question them once and this is what happens. No way are you allowed further to question staff. A barrier in the form of a rock-solid wall greets any opportunity to try to correct inequities. Mistakes made by staff should not be taken out of the hides of the disabled. Staff should become more responsible. Whenever someone complains about this, you always find a deeper review of your file. They try to find more mistakes they have made and, once again, arbitrarily reduce your income.

With the increased workload staff complains about, we often wonder how they get enough time to destroy someone's esteem and dignity until you're beholden to them. This must stop. We need to be separated from the social services umbrella. I'm going to repeat that: We need to be separated from the social services umbrella. Individual and systemic advocacy are sorely needed here. Why are we denied same?

Barriers in education are getting worse every day. FBA will only pay for education if you can go to school at

least half-days. Some people have even been subjected to being forced to sign a performance contract. How can any person with a disability guarantee they will be available every day? University tuitions have gone up sharply. How is a person on a disability pension going to afford schooling when you put it so far past our ability to pay? When someone applies for OSAP funding to help themselves, we are subjected to a review of funding under GWA and risk losing our funding. We are discriminated against before we can even get out of the starting gate. The loss of funding by the school boards results in less assistance for those with a disability, and their future is now a foregone conclusion: They will be dependent upon the system because they are denied basic education and will be unable to work meaningfully. With systemic advocacy proper programs could be initiated, reducing the need for dependency on the system. The system discriminates at nearly every point. Systemic advocacy is sorely needed here.

You wish to revert control of our lives back to the professionals—my predecessor just went through this—yet you do not require them to have accessible offices so we may get treatment. I suggest that less than 10% of the doctors in Ontario have accessible offices. It requires us to see a physician at the hospital. Would you risk leaving a wheelchair outside for someone to steal? The wheelchair of the lady who was here two presenters ago was worth roughly \$8,500; my powered chair is worth \$10,000.

Again, OHIP and the hospital costs go up. Why? You want to give control of our lives to the medical profession in advocacy and consent to treatment. Equal access to medical service is very difficult and is becoming increasingly so. This is often followed up by giving up in despair. What a way to live. Medical reports mentioned above are now subject to a fee, a minimum of \$50. To keep our funding, we are told to get a new medical report every year, but you won't fund the cost.

How are people on a disability pension going to afford this? Chances are that the food budget or clothing necessities are not met. Proper diets are ignored because there is no funding for same. Diabetics are frequently discriminated against. Workers deny many funding for needles, lancets and test strips, and as a diabetic I can tell you that can run up as high as \$250 a month.

You are shutting down hospital beds, and in some cases wish to close entire hospitals. No thought has been given to the idea that these same empty rooms and buildings could help reduce the housing problem facing the poor, seniors and the disabled. The buildings already exist, and many buildings are partially in use, so the cost would not be excessive. Coordinating between ministries is non-existent. Systemic advocacy is needed.

The Ontario Building Code blatantly discriminates against the disabled. The code requires that apartment buildings with suites for the disabled must have an entrance door of 36 inches, then allow the foyer door immediately behind it to be 32 inches wide. One of the two buildings in my complex is exactly like that. I'm denied access to that building. I require the 36-inch door. How do you get in to visit anyone else? The same code says that the doors to the bathroom and bedroom in our

own suites do not need to be of equal size. My own apartment is four years old, a co-op, yet I cannot use my wheelchair, either my manual, which is smaller, or my powered chair, to access my bedroom or bathroom, because the doors are four inches less in width.

In moving to my building, myself and two other persons with a disability found that in providing all the kitchen amenities the designers thought we should have, they forgot we needed to be able to access the cupboards, hold open the fridge door, and we had only 12 inches of workable countertop space. The retrofit cost \$27,500. It's the same old rhetoric that we are supposed to have a place to live in, but don't let us use all of it.

Similarly, seniors residences are built with only a 34-inch door requirement. Are we supposed to shrink as we age? I haven't been doing that, unfortunately. Added to this, the same building code sets the limitation for commercial establishments to have access doors of only 32 inches. The same regulations that allow these dimensions then provide space for a foyer which does not allow a wheelchair to make a turn to enter.

Drugstores, restaurants, every Liquor Control Board store that I know of, except two in the province, all have 30- to 34-inch entrances with the same turns. Are we not allowed, because of our disability, to eat, imbibe or medicate? How are we to access these dimensions? I personally have to sit outside of many of these establishments, my drugstore especially, and I have to knock upon the window in the hope that some good Samaritan will take heed and come outside and serve me. Try doing that at 20 below. Am I not allowed the right to see what I wish to buy?

Currently in Kitchener, a townhouse development is being reoffered to the public by CMHC. While this is not a provincial project, the fact that a ramp is being provided for one of these units is good. However, no thought has gone to providing a bathroom or bedroom on the first floor. There are 18 stairs to climb to reach either facility, with no elevator. This type of attitude extends to the provincial arena as well. We need systemic advocacy.

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Transportation for the disabled is also being denied to many of us. The funding cuts announced for the municipalities were not supposed to further affect the disabled community's parallel transit services in 1996. Your cut last fall was supposed to be sufficient. The city of Waterloo has taken it upon itself to reduce last year's funding by 10% this year and a further 10% next year. This will reduce our opportunity to access rides. Who will get priority? Those of us who work or those going to school? What about the rest of us? The parallel transit system which operates in Kitchener has announced an increase of 95 cents a ride and a proposed increase in Waterloo of \$1.80. How can anyone on a disability pension afford to go out? Our ability to volunteer, shop, visit friends and family or go to church is being taken away from us.

The repealing of the Advocacy Act takes away our opportunity to fight for our rights. What is fair about \$2.35 and \$3.20 fares for specialized transit when the local transit authority, Kitchener Transit, offers \$1.60 cash fare with discounts for bulk ticket purchasing to the

walking public? Anyone going to school or university will need five return trips a week on specialized transit. How are we going to pay \$100 to \$140 for transportation each and every month on less than \$650 to \$800 income monthly? You'll notice there's no allowance here for shopping, doctors' appointments or recreation included in this. Advocacy, systemic and individually, is required. Do you still want to deny us equality?

Housing starts have been stopped to house the disabled and the poor. Subsidized housing in Waterloo region has a waiting list of five years for any apartment. Ontario Housing does not have any accessible units and has been depending upon co-op housing to provide same. There is no hope for a disabled person to move, whether a resident or someone wishing to become one, because you have cancelled all those units which were available and which were on the drawing board. You are eliminating rent controls, which will immediately result in devastating rent increases, without a doubt. You're proposing to give rental allowances, but will they cover the increased cost? Extremely doubtful. What happens then? Where are all the disabled going to live?

You incarcerate us if we demonstrate, yet you will not give us the opportunity to be heard by denying us access to advocacy at every level. Bill 19 is a disaster to the poor, to the homeless, seniors and the disabled, and their rights to be equal partners in life. You forget that most of us have participated in the workforce to keep this province alive. Yet now you discard us without justification and remorse. Our pride to be an Ontarian is being stripped away since you don't consider us worthy of being equal citizens of Ontario.

The changes to the Substitute Decision Act and the Consent to Treatment Act also deny all of us our basic rights as human beings. Independent advocates and rights advisers are being discontinued under Bill 19. You are assuming that the family and the care givers are the best people to rule and regulate our lives. Yet the legal aid problem and the OMA's doctors' rates and where to practice are just a few examples of how this system just does not work. This vested interest discriminates against all of us who need help.

The right of someone else having control of your future is scary. How would you like not to have any bearing on what you may or may not do? Go out for a walk. Have the police come to your doorstep and forcefully take you away because someone else determined that you were not responsible or incapable. Would you like your parent to be removed from the home because another member of the family decided they were incapable in living within society? What if it were you in this position? This is the funny part. Realize everyone here could be removed from society the same way.

You're automatically making legal incarceration for anyone who's had any sort of psychiatric disorder regardless of their current status. Are you stating that there are no psychiatric survivors? What guarantee do each and every one of you have that you will not be the next victim of spousal abuse, rape, swarming, mugging or vehicle accident?

I'm going to do some jumping here to get everything in. Early in this hearing a representative from Sick

Children's Hospital presented a blanket approval for the consent for children that did not in any way address the plight of the adult population in this province. The protection of being able to hide and justify one's mistakes is being given to those who make the mistakes. Is this not double jeopardy to those who are receiving treatment? Malpractice lawsuits will surely be eliminated because the horse will own the cart.

Did we not learn from the happenings in Orillia in both the private and the governmental institutions? The physical and verbal abuse, the restraining. Most of us believe in a life thereafter, but no one has given the government the right to provide us hell on earth. What are you doing to the most vulnerable of our citizens? Are you prepared to build and operate these jails of conscience?

After hearing of life without advocacy, would you feel secure of your health, of your family's future, or are you telling those of us that need your help that you just don't care? Are you prepared for the legal implications that can affect every area of your or their financial future with all financial assets being stripped away before being able to qualify for assistance?

I'm going to leave it there. The last two pages that I have here are from southwestern Ontario, Mr Chair, including your region. This is the result of all of the meetings conducted by the Advocacy Commission in that area. That's telling you what our problems are. They're there. That's coming from everybody. Thank you.

The Chair: Thank you very much, Mr Gallagher, for your presentation. I appreciate you taking the trouble to come forward. This committee will recess until 1:30.

The committee recessed from 1159 to 1331.

QUEEN STREET PATIENTS COUNCIL

The Chair: First on the agenda, from the Queen Street Patients Council, is Ms Chambers, facilitator.

Ms Jennifer Chambers: I've given copies of my talk to Donna Bryce, the clerk. I hope that you will take the opportunity to read it.

My name is Jennifer Chambers. I work for the Queen Street Patients Council. The patients council is an organization representing psychiatric consumer-survivors who either have used the facilities of Queen Street Mental Health Centre or live in the Queen Street Mental Health Centre catchment area. It's the mandate of the council to represent concerns of patients to the system so that the system will operate more on the patient care basis than on what the system needs.

The Queen Street Patients Council is a member of the Ontario Advocacy Coalition and wholeheartedly supports its submission to the committee. The patients council participated in the process leading to the appointment of the Advocacy Commission, and we speak from experience of the absolute necessity of independent advocacy and rights advice that is accountable to the community of vulnerable people.

Like many members of the disability community, we accepted the Substitute Decisions Act and Consent to Treatment Act because we believed that our rights would be protected through the use of the Advocacy Act. Now

that it's gone, we're quite concerned about the protection of our rights. Contrary to what's been suggested by some, the Mental Health Act and common law allowed health practitioners and families to take action whenever there was danger to any individual or individuals. It's our position that our fundamental rights and liberties were safer when they were covered purely by the Mental Health Act in common law. An example that some people have used to support the concept that doctors are forced to respect people's right to consent over that person's wellbeing is the case of man who died at Sunnybrook. In fact, the law did allow treatment in that case; it was the doctor's ignorance of the law that was the problem.

Ontario's Mental Health Act was a piece of legislation of which to be proud. It was routinely violated, but it offered shelter to psychiatric patients from some of the abuses that survivors are all too familiar with. The Consent to Treatment Act and Substitute Decisions Act diminished some of our rights, and Bill 19 proposes to reduce our rights further while removing the Advocacy Commission dedicated to our protection.

I'll review some of the problems with the legislation and give some examples to illustrate our points, but I reiterate, we would prefer to do without either of these acts and revert to the Mental Health Act and common law. I won't address all of the points in the paper; I'll just address some of the points I think would be best highlighted by the concerns of our particular constituency.

Context of Bill 19: The Mental Health Act required doctors to acquire informed consent before they could administer treatment, which usually meant drugs. Despite the existence of this requirement of informed consent, it was fairly routinely violated. In my work at Queen Street Mental Health Centre I've yet to meet a patient for whom all the requirements of informed consent were met, which means telling someone what their diagnosis is, what the proposed treatment is, how it's supposed to help, all of the side effects and the alternative treatments. People who have asserted that they did not want to take drugs reported being threatened in some fashion. They were told that they could be made involuntary patients, that they'd be forcibly injected or restrained, that they'd be found incapable or that they'd be summarily discharged. My experience was echoed in the auditor's report of 1992, looking at Queen Street Mental Health Centre, that found requirements for informed consent weren't being met.

It's very important that you realize that dangerous treatments must involve informed consent. Psychiatric drugs are dangerous treatments. They can cause tardive dyskinesia, which is brain damage that can be irreversible. The effects can be debilitating, usually involving involuntary muscle movements, facial grimaces and spasms, writhing. By the time these physical effects appear, it's often too late to stop the progress of this drug-induced disease. I won't go into every possible problem that can result, but some of the more life-threatening ones are throat spasms that can cause difficulty breathing and swallowing, which means that psychiatric drug users can be at greater risk of choking to death on food. Some people who could have been assisted by help other than drugs are not offered it in

provincial psychiatric hospitals, and can instead end up permanently disfigured or disabled by drugs, so that along with their original problem, they can have this problem added. I've not met anyone at Queen Street who was offered any treatment other than drugs.

The tragedy of these drug-induced diseases is compounded when the person is unaware that what they're experiencing is drug effects, and instead believe that it's part of their mental illness, and they become afraid of themselves. If fully informed, some people would choose psychiatric drugs; other people would choose not to take the drugs and decide to exist in the situation that they were originally in or with some other form of assistance. There should be some choice available, other than just drugs, for consent to be meaningful.

Under the Mental Health Act, doctors could have been held accountable for violating the requirements of informed consent and could have been subject to a fine, not more than \$25,000, for committing statutory breach of duty. The Consent to Treatment Act abolished fines and allowed the requirement for obtaining informed consent to include implied consent. As anything other than active resistance tends to be construed as consent, and active resistance can result in people being forcibly injected and restrained, this means that the meaning of consent is lost. While it was imperfectly observed, the Mental Health Act did give us something to appeal to that the Consent to Treatment Act diminished.

Most of my concerns with Bill 19 are about when people are found incapable, but there are some problems when people are capable as well. One example would be the potentially serious problem of the Health Care Consent Act permitting capable people to be treated in emergencies without their consent if the health care practitioner can't communicate with them because of disability or language. In the psychiatric context, the danger from people receiving a psychiatric diagnosis is that their agitation, if they can't communicate to the doctor, might be justifiable but they won't be able to explain this if their communication isn't facilitated somehow. Someone who's then treated with psychiatric drugs can become quite incoherent. Instead of amendments reducing liability, the public would be better served by providing health practitioners with facilities for diversity of communication needs.

The rest of the points are when people are found incapable. I won't mention all of them; I'll mention some of our major concerns.

One of them is the loose criteria for people eligible to be guardians or substitute decision-makers. The definition of family is expanded in Bill 19 to include anyone related by blood, marriage or adoption. Bill 19 removes the requirement in the Substitute Decisions Act for a statement from the potential substitute decision-maker that they've been in contact with the person in the last 12 months. These changes allow people who have had no contact with an individual in years, or at all, or with whom there might have been an abusive relationship, to become a substitute decision-maker. If no recent relationship or no positive relationship existed, the substitute decision-maker wouldn't be able to meet the criteria that are elsewhere, in the Health Care Consent Act, to act

according to the person's values and beliefs. Generally, people would be better protected under the auspices of the public guardian and trustee than they would be being represented by a distant relative. The public guardian and trustee has certain procedures they have to follow that allow better protection of people's rights.

While I think families are important, often wonderful sources of support, and deserve their own means of support, it also must be recognized that families can be a danger to people. A study of elder abuse found that at least 4% of elders were being mistreated, which means 10,000 elders in the Metro Toronto area alone. A large number of people in the psychiatric system are survivors of abuse. Temi Firsten did a study that was published in 1988-89 of five Toronto hospital psychiatric wards and found that 83% of the women interviewed reported severe physical or sexual abuse in childhood and/or adulthood. I knew a woman who was battered and, because of the stress of her situation, ended up in the psychiatric system. As a result of having a psychiatric history, she lost custody of her son. The batterer often appears much more capable and coherent than the victim. It seems reasonable to me to expect that a truly loving family wouldn't mind their loved ones having access to an outside source of advocacy and support.

Another point is that with the exception of rights advice for civil commitment and financial incompetence in psychiatric facilities, rights advice has been stripped away. A person can be deemed incapable and not told that this has happened, and that they're being treated as incapable and not told that she or he has the right to apply to the review board to oppose the finding. The person is also not told they can apply to the Consent and Capacity Board to have someone of their choice, rather than a person who might be the substitute decision-maker, appointed. Bill 19 removes the requirement that the person meet with a rights adviser before the public guardian and trustee can become their guardian. The public guardian and trustee simply informs the person they are their guardian and that they can appeal to the review board to review the incapable finding, but they'll get no assistance in doing so. Having rights that you're not told that you have and that you have no assistance to access, especially for the psychiatric survivor community, is a cruel joke. It's a Kafkaesque system. Without rights advice, a person in this situation is more at risk of losing their rights without due process than is someone who is charged with a crime.

We have concerns about changes to temporary guardianship allowing someone to be now held for 90 days without even notice that there's a guardian acting for them.

I won't go into detail about the powers of attorney. I'm sure you've heard about some of the problems with the Ulysses clause.

Another great concern of ours is the conflict of interest that's involved when caregivers can act as guardians and rights advisers. There's a blatant conflict of interest when people who can benefit from where someone resides and decisions that are made about their care actually have the ability to be guardians of their property or person. According to Bill 19, rights advisers can be designated by

the minister or psychiatric facility. The conflict of interest inherent in this situation should be obvious.

At Queen Street Mental Health Centre the patient advocates were approached with complaints by patients of abuse by staff 41 times from 1986 to 1992. It's safe to assume, as with all abuse, that this is just the tip of the iceberg.

The day Bill 19 was introduced, the auditor's report described facilities for developmentally disabled people at which staff were spending people's personal needs allowance on expenses that were supposed to come out the facilities' budget. At London Psychiatric Hospital in 1992, male staff were routinely stripping teenage girls naked and putting them in solitary confinement. At Brockville Psychiatric Hospital, a patient was returned to the same floor with the same staff after having reported having been raped by one of them. The staff in question threatened her and she withdrew her complaint. There was a social worker who was aware of what was happening—in fact, the person that the girl complained to—but she did not pursue the matter because she did not want to interfere with her relationship with her colleagues. Some staff have reported their fellow workers, but this is rare and they often pay a price. In one small town with a psychiatric facility, a woman who had reported her fellow staff for abuse left town after being threatened. There should be whistleblowing protection for staff.

But the point is that the people who are in the best position to abuse vulnerable people are the ones whom they are dependent on. This may happen in a minority of cases, but there's no way of telling which staff or which family members are the ones who put vulnerable people at risk. There's no way of telling this. There must be some outside source of help that abused people can turn to. That's why there must be advocates or rights advisers who are independent of care provision and only accountable to the community of vulnerable people that they exist to serve.

The day the Advocacy Act was repealed the Minister of Health was heard to say in the press scrum afterwards that "Contrary to what we've been told, primary care workers do not abuse their patients." We beg the minister to look at the evidence to the contrary available in the research, court cases, inquests and personal stories.

Rights advice when consent and assessment of capacity are at issue again have the staff in a conflict-of-interest situation, as it is usually staff who would be the ones treating someone without consent or making the finding of incapacity.

The right to privacy is an issue that came up in Bill 26 and again in Bill 19. It appears that sections of Bill 19 would allow regulations permitting an assessor or anyone who simply states in writing that they want to make a guardianship application free access to personal patient records held by any regulated health professional, with the exception of what's covered by the Mental Health Act and the Long-term Care Act. The possibility of serious and damaging violations of privacy is considerable. You could interfere with vulnerable people's willingness to seek help.

Finally, we're very concerned about reducing restrictions around restraints and electroshock. The Substitute

Decisions Act allowed a guardian to consent to the use of restraints only if it was part of a guardianship plan. Bill 19 removes this requirement. It means that the limited accountability provided by having to give the use of restraints some forethought and inform the court would be gone. There's no reason to believe that this would not allow unlimited use of bondage and locked doors in homes or other places of residence.

Restraints are dangerous. Even their use in a facility that is supposed to use them safely and monitor their effect doesn't guarantee any safeguarding of the individual. I have a copy of an inquest report showing that in 1994 an inquest was held into the death of Celia Thompson, who died August 14, 1993.

Celia Thompson had been placed in four-point restraints on August 13. She was on three different psychiatric drugs, some of which would have had the effect of lowering her blood pressure. Although the hospital protocol at Queen Street Mental Health Centre called for vital signs to be taken every 30 minutes, at no time did a nurse or doctor take her blood pressure or her pulse rate. Protocol called for the removal of restraints on a rotational basis and the passive exercise or massage of limbs. Obviously the designers of the protocol were concerned about circulation stasis. But there was no restraint release at any time.

In the 24 hours prior to the patient's death, she had only 550 millilitres of fluid uptake and no output was measured. The consultant noted that dehydration and decreased urinary output could be a factor in clot formation, as could be, I would tend to believe, the drugs that lowered her blood pressure and the lack of release of limbs. On August 14 Celia Thompson was dead of an acute pulmonary thromboembolism. This happened in a place that's governed by protocols that are supposed to prevent this kind of thing happening when someone's in restraints. Imagine the danger if restraints are used in someone's home or an unregulated facility. Please don't take the use of restraints this lightly.

The Health Care Consent Act also allows substitute consent to electroshock as aversive conditioning. I believe this is an assault on a person. An expert who is up to date on the use of aversive conditioning, which is a branch of learning psychology, would also be able to inform you that it doesn't work. This isn't news. People knew this when I was in university. Positive reinforcement works far more effectively. Aversive conditioning tends primarily to cause an aversion to the person who is giving the conditioning. People quickly habituate to pain that's given them.

We hope our comments on Bill 19 will be helpful, but we do want to emphasize our position that we'd prefer to be without the Substitute Decisions Act, the Consent to Treatment Act and the Health Care Consent Act and return to the auspices of the Mental Health Act and common law. Ontario needs rights advice and systemic advocacy. To be effective, independence, accountability to the community of vulnerable people and money are required.

1350

In closing, I want to read an excerpt from a letter that was written by Mike Harris on June 15, 1993. He said:

"The NDP's approach to deficit reduction could have a profound and far-reaching impact on our social services and health care systems. In achieving short-term savings, the government will create long-term pain for the disabled with its ill-conceived changes. While my party and I are heartened that the government is coming to grips with the crisis in costs faced by the broader public sector, we are concerned about the issues of quality, access and fairness as it affects people with disabilities. So we will be working to ensure that these things are not compromised by the NDP's 'slash and burn' approach to deficit reduction."

Under the circumstances it seems like an ironic statement, and I hope that the government will live up to what their original concerns were about the safety and protection of disabled people in Ontario.

Mrs Boyd: Thank you very much for your presentation. I think I saw a little bit of shock on some my colleagues' faces across the way when you suggested you were better to go back to common law and the Mental Health Act than to have the Health Care Consent Act and the Substitute Decisions Act without the Advocacy Act. We certainly heard that when we were doing that legislation from lots of patient groups, that the only way in which some of the provisions around substitute decision-making in particular would be acceptable to people would be if there were an advocacy organization available to assist them. I gather you haven't changed your minds. In fact, if anything, you feel more strongly about that today than we even heard in 1991-92 when we were making that legislation. Is that correct?

Ms Chambers: We feel very strongly about it. Obviously now, in retrospect, we wish that we hadn't supported any of the acts, but then of course we had no way of knowing that the Advocacy Act would be so quickly abolished.

Mrs Boyd: Well, none of us did. It was quite a surprise to a lot of people. I don't think we've ever had a government who set out to destroy everything that the previous two governments did before in the way that this one has, so that was obviously not within our experience, it wasn't something anybody expected.

The people you serve are all people who are part of the mental health system. They may be sometimes inpatients, sometimes outpatients, that sort of thing. I'm curious as to what your impression is of the ability of the psychiatric advocate's office to protect them at least while they're in a facility and whether an expansion of that to community programs would be acceptable to your group.

Ms Chambers: I think it's good that the Psychiatric Patient Advocate Office has a rights adviser available on site in facilities. As with all of the advocacy that we're recommending, we emphasize that we believe it's important that advocates be independent and accountable to the community of vulnerable people, and we'd like to see this happen with the Psychiatric Patient Advocate Office as well.

Mrs Johns: Thank you for your presentation. As you can see, it wasn't as bad as you thought before you got started.

I just want to talk a couple of minutes about emergency treatment and then try and move on if I can. On page 3 of your document you talk about emergency treatment and the Health Care Consent Act. Basically what you're saying there is that the patients you're representing are worse off as a result of us, that they may have an inability to communicate with the doctor and we would therefore treat them and it may not be what they wished to have happen.

From my perspective, and I'd like to be corrected if I'm incorrect, but it's my understanding of that section that if the health practitioner knows that the person doesn't wish to be treated, he cannot do that. That's section (e), I think, of 3. Then it goes on to say that they have to always be making an effort to find some way to communicate with this person. As soon as that happens, they have to communicate with the person.

My fear in not implementing this section is that someone could come in and we would have to stop and not treat them. You could see that, for example, if someone had a car accident or something happened, and we would be sitting there, we can't communicate with them, so I'm caught between a specific problem with the system you have versus what's good for the people of Ontario. Can you talk about that with me and tell me if I'm misinterpreting that or what you actually meant? Maybe I'm misunderstanding.

Ms Chambers: I think the difference is that in physical emergencies, where people's lives are threatened, the need to immediately treat is more obvious and the provisions to need to do so. In psychiatric emergencies or psychiatric crises, there isn't necessarily a life-threatening situation going on and the matter of whether or not it's an emergency is sometimes a matter of interpretation of the physician.

My concern is that people who are unable to speak or people who are unable to communicate clearly enough in English will be suffering the effects of the treatment without consent or ability to communicate. I'd like to see there be facilities established where physicians more easily access people to help them with that kind of communication.

Mrs Johns: So from your standpoint, you're basically talking about a person not being able to understand a language. Am I understanding you correctly still?

Ms Chambers: Yes, or someone who communicates with sign language or is unable to speak clearly. It also might apply to people who are labelled developmentally disabled and who just need some extra support that the doctors aren't used to giving in order to communicate well.

Mrs Johns: I think the problem is the emergency definition then.

Ms Chambers: Yes, that is part of the problem.

Mrs Johns: I believe that if we can wait, then we should, that's not an emergency then. From my standpoint, I believe that it will only be serious emergencies that will be treated in that definition.

Mr Michael Brown: Welcome to the committee. I certainly enjoyed your views. I want to go back to the point that Mrs Boyd was raising, that your preference here, given the circumstance, would be to just repeal the acts,

go back to the Mental Health Act and the common-law rights that all Ontarians have. That's an interesting concept and, in my view, you're often right. I don't that you're right in this particular situation, but often when governments try to codify rights, they actually take rights away.

My question is the accountability to your community or the community you represent by advocates. I'm wondering, given what's going to happen—because what the government says is going to happen, they're not going to change it—what we might be able to do to help you, because even the government itself says, "We're going to have this informal system," blah, blah, blah. Is there something we should keep in mind as legislators that would help your community to more effectively advocate in the situation we're about to find ourselves in?

Ms Chambers: You could emphasize as a policy issue that, even if advocates end up coming from, say, the funding of existing organizations, that they none the less be controlled, directed by the people they serve rather than, say, the facility that they exist in.

Mr Michael Brown: Does your community of volunteers receive any kind of government support or public support?

Ms Chambers: The patients council receives enough funding for two part-time staff.

Mr Michael Brown: So could they act in effect as advocates in a measure that I understand is limited by this act to some degree? But could that be one of the answers here?

Ms Chambers: An organization like ours that's appointed by the people they serve, yes, would be a good model. One full-time equivalent position for an organization in the largest psychiatric hospital in Ontario would be awfully difficult to meet all the needs of the people.

Mr Michael Brown: Extraordinarily challenging.

Ms Chambers: Yes. But that sort of model, I think, is a good one.

The Chair: Ms Chambers, thank you very much for taking the trouble to make a presentation here today.

1400

NADIA DIAKUN-THIBAUT
MICHAEL KLEJMAN

The Chair: Our next submission will be made by Michael Klejman and—I'm going to have trouble with this one—Nadia Diakun-Thibault.

Ms Nadia Diakun-Thibault: That's not too bad. Not quite accurate, but not bad.

The Chair: I guess I got it close. You have one half-hour. We will be pleased to hear your presentation.

Ms Diakun-Thibault: Thank you very much, Mr Chair. I am Nadia Diakun-Thibault. I am soon to be a former member of the Ontario Advocacy Commission. Michael Klejman, who is here with me today, is also soon to be a former member of the commission. We would like to express regrets from Jane Darville, who unfortunately was taken by the flu and could not join us.

Thank you very much for the opportunity for our appearance. I would like to view this opportunity as an exercise in natural justice. This is a chance for you to hear the other side.

In the quest for a civic community, government and the public, whom it serves, must find ways of collaboration: not just strategies or tactics to achieve an end but a new way of doing business around public issues. The new way of doing business is called collaborative leadership. Collaborative leadership draws into its sphere responsibilities, duties as well as rights. It makes the citizen and his or her government equal partners working towards solutions, not patchwork, on public issues. There is less reliance on government to deliver every want and need. There is more emphasis on creative thinking and problem-solving.

In December 1991, when Elaine Ziemba, Minister of Citizenship, appeared before the standing committee on administration of justice, she must have felt a sense of pride and satisfaction, having tabled just months before a piece of legislation full of good intentions, flawed and rough in its drafting albeit. By 1994, we would have a basket of useful legislation intended to give the citizen greater control over matters of moral autonomy.

The error in judgement was not in the legislation and its noble intents but in the implementation, in the lack of leadership within the Advocacy Commission. The answer to the question "What went wrong?" can be classified as: mistrust, of government, of special-interest groups, of service providers, of families; dominance, of special-interest groups, angry individuals and powerful professional associations; failure, of government to make clear its intentions, of special-interest groups to rise above parochialism, of leaders to lead. And this before the legislation even received royal assent.

The Advocacy Act draws its genesis from two decades of societal change that gave rise to the notion of social advocacy. The O'Sullivan report describes social advocacy as an activity:

"Similar to legal advocacy, social advocacy means speaking or pleading on behalf of others and entails many of the same professional responsibilities... The basic difference, however, is that a social advocate speaks or pleads on behalf of another by using non-legalistic measures: He or she, unlike a lawyer, does not directly invoke or participate in the legal process to obtain the desired result."

This definition, I submit, is unsatisfactory. The social advocacy concept had not evolved nor been clarified by 1991. Nor was it further developed after extensive committee hearings. It was the one glaring flaw of the legislation. It did not clearly define advocacy. For legislation to work, we need to know what essence drives it.

Commissioners in private meetings and discussions had personal notions of advocacy and appropriateness of activities, some of which clearly were proscribed for the commission. I had a sense that notions of ethics, legality and public policy implementation were of little importance to some commissioners. It was more an opportunity to play out whatever personal biases one had, especially on the part of some "consumer" commissioners. Such activities seem more like lobbying rather than advocacy.

Before long it was clear, at least to me, that there was no place or role, in the view of some, for commissioners appointed by the minister. I should like to believe that my appointment was the result of the minister's belief

that the experience of a family member of an Alzheimer person would have been of particular interest and usefulness to the Advocacy Commission. The minister understood; her mother had Alzheimer disease. Some of you were kind enough to share privately with the Alzheimer society that you understood our concerns, when I represented them when you were in Ottawa, from personal experience with a parent.

In this regard, it is incumbent upon this committee to take more than just passing notice. In the wake of this government's fiscal agenda, many elderly, those with neurological disabilities, those with developmental disabilities and their families will feel the backwash. Fiscal responsibility need not be callous.

Spare not the commission. It has demonstrated its inability to not do the job well. Do not be seduced by proposals that would give this commission a new look. Advocacy must be done well or not at all. It must be exercised competently and without bias. From the materials that we saw as commissioners, the elderly are the most vulnerable. A prudent option is the creation of an ombudsman for the elderly, reporting to the Legislature and serving the public. I ask that this committee bear in mind that the public will not forgive any government if it abandons its most vulnerable.

Mr Michael Klejman: Moving on to the second of a three-part team, I'm Michael Klejman. I also was appointed to the commission in the fall of 1994. In my remarks to the committee, I will not focus on the old legislation or the proposed new legislation contained in Bill 19. I want to share with you my experience and some of my thoughts on the future of advocacy and the needs of vulnerable persons. These will not be very profound or extensively researched views. Rather, they will be coming from a person who feels as uncertain today as he was some two years ago about what is the right or wrong way of ensuring that rights of individuals are recognized, individuals are aware of their rights and how to balance these with societal needs and constraints.

In the fall of 1994, I was approached and invited for an interview by the then Minister of Citizenship to become a commissioner on the newly formed Advocacy Commission. It was a fairly new sphere of human service that I had not been directly involved in in all my years of work in social and health services.

When my appointment was confirmed, I was still somewhat uncertain as to whether I should proceed. I was warned at the time by a colleague who had been a strong advocate for years to reconsider, that I would be in for an unpleasant experience. I was also told to be very alert to the politics within and around the commission. I was told that the advocacy movement, with which I was only peripherally familiar and primarily from the perspective of the elderly consumer, was not unified or in agreement about the commission and its consumer appointees. As I have done so many times in my life, I put trust in my abilities to communicate, understand people and get past political and other facades to work at issues face to face.

I have to say that I feel I have failed in my role as a commissioner. As one individual among 12 commissioners, I was prohibited from carrying out my responsibilities as a commissioner. I was labelled and made to

feel unwelcome. These are my own observations and feelings. I also observed a rapid process of control being established over other commissioners, manipulation and pressure to the point that individual commissioners did not feel or were able to speak their own minds. In the period of about five months, we, the three remaining commissioners who were appointed by the minister, were prohibited from sitting on certain committees.

It is not my intention to say much more about the workings of the commission except to observe that it was in the process of creating a structure that, in my opinion, would have led to a system that was confrontational, driven by extreme views that appeared to reject any provider of services as untrustworthy, without principles and fundamentally incongruent with objectives of the commission. This view I think extended to include families of vulnerable individuals.

The system for advocacy that was emerging from the commission did not have the time to move beyond the rights advice, thus avoiding the potential of entrenching such a schism.

I feel strongly that the demise of the commission was necessary. I do regret the impact it will have on the concept and principles of self-determination and the need for safeguards for vulnerable individuals. No one segment of the society can claim total right to and usurp control over mechanisms and legislative provisions for protection. Health professionals do not have a monopoly, families and close relatives do not, and neither do vulnerable individuals. We all must recognize that it takes all these individuals to ensure that people are not abused and that their ability to live in security and with a sense of self-control is not taken away from them.

Where do we go from here? I would strongly suggest that the government that places great value on individual responsibility and challenges its citizens to take a full account for their actions needs to have in place legal provisions that define what these responsibilities include. Whether this is accomplished through a single piece of legislation or through existing acts may not matter. These provisions ought to set out requirements on professions, agencies and institutions, as well as families and government ministries. These provisions should involve educational requirements and specific provisions related to access to services.

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I am not convinced that a purely voluntary system will work, maybe because I have not seen such in action in my own realm of work. The concept of employer-vested provision of advocacy has its real limitations as well. Maybe we need to build on existing experiences and look at areas such as the rapidly growing elderly population in which to pilot initiatives that test both employer-based advocacy and the external voluntary approach.

Thank you for the opportunity to share my views with you. We'd be prepared to answer any questions you have.

Mr Marchese: It's good to see you both again, in different capacities. One of the points I guess for me is that I've been involved in many volunteer organizations over my lifetime and I've never found uniformity in our groups. It's very difficult to find homogeneity of thought

and things evolve in organizations in terms of how we get there to solve those differences. Obviously, both of you have pointed out differences that you've had with the commission. I'm not sure how we solve these from the outset, and I'm not sure that as we set up an organization we can solve all of these problems from the beginning. Things emerge, and then we attempt to solve them. Is that a reasonable thing to say or to expect from organizations?

Mr Klejman: Yes. If you're referring to the functioning of the commission, I agree with you and that was the mindset I had when I approached the commission. I found, as time went on, fairly quickly, that, first of all, I—and I was just one of four people—was deemed not to be acceptable in certain parts of the commission's life and the commission's work. Secondly, there were issues of major importance that were being set aside because some members of the commission were determined to put their agendas forward and carry the day. The dynamics are what they are, and sometimes they work to the best of the process and sometimes they don't.

Mr Marchese: My understanding is that on the whole, over 80% of the time there was agreement by most of the board members around issues that you were dealing with. Obviously, there was disagreement some of the time. That seems to me reasonable, and from time to time you'll get disagreement from some of the board members. Do you have a reaction to that?

Ms Diakun-Thibault: Could I address that? I agree with you that there shouldn't be homogeneity of thought. Certainly, I would never advocate that. I didn't enter this job or this role as a commissioner with the expectation that everyone's going to think like me. That would be foolhardy. I think you know very well that what makes Parliament work is certainly not that there is a homogeneous mass of thought but that there are different opinions.

The problem with the commission was that there were certain legal disabilities. I would state that albeit we had legal advice and constant legal advice, there was on occasion an unwillingness of some commissioners to behave and to act as a crown agency with a vast amount of power and a vast amount of responsibility.

We did try to amend. Yes, there was certainly agreement, but if you look at every single one of the resolutions that was passed, for the most part those were non-contentious issues, except for the one motion that was passed in December 1994 here in Toronto. We tried with a motion in Ottawa in February to redress that. It failed. It failed because we were outnumbered eight to three. It's not difficult to have so-called consensus if the numbers are on a particular side.

Mr Klejman: If I may just follow up, there's a difference between having discussions, debates and disagreements and a situation where rules are set to prohibit some individuals within the commission from participating, even, in the discussion process and decision-making.

Mr Marchese: I guess it's difficult to comment on the internal workings of a committee, but my general view is that a commission is set up to represent many different points of view and sometimes it may be difficult for

some to feel that they're not being represented. I understand that. That will happen, and my view is that we work that out.

Ms Diakun-Thibault: We tried.

Mr Marchese: Or we try.

Ms Diakun-Thibault: It failed.

Mr Marchese: But I want to get on to another question. You're suggesting an ombudsman for the elderly. That would be one office representing one particular group, as opposed to the kind of office we thought was set up to represent all groups across the board, which I think is much more effective. I'm not convinced the government would think that's not a bureaucracy, creating another bureaucracy, so I'm not sure how far that proposal would go. Is it your sense that creating such an ombudsman to represent only the elderly is useful as opposed to a cross-community kind of commission, as we have set up?

Ms Diakun-Thibault: At this time, yes. Mr Marchese, you will recall, because you were at my confirmation hearing, that I was very much in support of advocacy and I still remain so. I am no longer a supporter, and it is unfortunate that I have to say so and be so frank, of the Advocacy Commission. I believe that demographically the argument falls very much on the side of the elderly. We have an aging population; even the words are now becoming cliché. We have to address the problems and difficulties of the elderly.

Every single day in my regular capacity as executive director of the Advisory Council on Aging for Lanark, Leeds and Grenville, I receive a telephone call either from a family member or a spouse who is having a great deal of difficulty with whatever. It is very difficult work to try to solve their problem or help them resolve their problems, and the elderly need particular attention at this time.

Mrs Boyd: I think it's very unfortunate that your solution to try to solve the problems was to take the commission to court. You lost in that because the commission was within its rights to make a decision as it did. It's very important when we talk about trying to resolve disputes that we recognize that there was a dispute—you had a disagreement; you took a particular course. I can well understand why that is not a very happy situation for you, but it seems to me also that your proposal is taking exactly the same step you complained about the other commissioners taking. You are looking at one particular group and the service of one particular group over the others, which is in clear contravention of the notion of cross-disability provision of advocacy.

Mr Hastings: My questions relate more to the functioning of the past Advocacy Commission in terms of, was this a schedule A, B or C agency? In other words, did it distinctly have an at arms's-length relationship with the minister?

Ms Diakun-Thibault: It was a schedule 3 agency and it was intended to have the arm's-length relationship with the minister. You will recall that it was November 1994 where there was a huge bill proposed by the NDP of the time. It was called the Statute Law Amendment Act (Government Management and Services) which would have given the commission an even greater arm's-length

relationship with the ministry. In that bill, under pressure of your party and the other opposition party at the time, those sections referring to the Advocacy Commission were removed.

Mr Hastings: Given that we had an experiment then with trying a bureaucratic approach to this resolution of trying to achieve some kind of a mixed advocacy model, why do you now advocate that an ombudsman approach would be any better of a model, given the Ombudsman we have for the province of Ontario, who doesn't even come to the committee and resists in many instances requests for information?

Ms Diakun-Thibault: That's a very difficult question to answer. First of all, I think you're almost trying to kind of back me into a corner to say something about the current Ombudsman. I shan't do that. I believe that having one person dedicated to look at the systemic problems that face the elderly—you could very easily define the roles and responsibilities of the ombudsman for the elderly—would be a better solution rather than a schedule 3 agency.

I did believe that a schedule 3 agency, at the time, might have been a very good solution. I think it is one thing you are incumbent to do: You must address the problems of the elderly, who will be left out in a lurch. If you wish, I would happily invite you to come to our neck of the woods, spend several days with us and meet with the elderly and hear from them yourself.

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If I might, I'd like to say something about the statement Mrs Boyd made about our going to court, taking the commission to court. We filed for a judicial review in the Ontario Court, which we felt was a proper course to go. We tried to amend; we found that there were instances in that motion, there were elements of that motion that were clearly ultra vires the commission. That is why we had to seek redress in the Ontario Court.

We did not lose, however. We were never heard. The commission changed the resolution, withdrew the resolution and then imposed five new resolutions, which effectively in our minds did the same thing, excluded the commissioners appointed by the minister.

Mr Klejman: Hoping to outweigh us and outspend us in terms of our ability to retain legal advice to fight this process. The case was never lost by us.

Mr Hastings: My final question relates to your experience in terms of, it seems to be somewhat unfortunate, if not highly unproductive, in terms of what you went through with this Advocacy Commission. I would be interested in knowing if you could get a copy of the cerebral palsy association's proposal for more of an accreditation model to advocacy, whether you could comment on it in terms of its theoretical or conceptual nature, where you don't get involved in these bureaucratic models of administration, because they usually seem to fail in even their most minimal official objectives or goals.

That particular agency seems to be advocating a way of, from the bottom up, despite perhaps some—it's almost like a hospital accreditation process, but that is more institutionally oriented, whereas the one they're advocating is looking at a customer service client- or consumer-based approach in terms of having it tied to

financial incentives. Completely new to me; it seems like it might have some interesting possibilities.

Ms Diakun-Thibault: I personally would be happy to look at it and offer some comments. I have not seen it.

Mr Parker: I don't know if there's time to get into the question that would be on my mind, but we've been told by the third party that this government hasn't given the Advocacy Commission a chance to prove itself, that it's in its infancy and it's hardly gotten off the ground. Now we're hearing they're already in court and they're falling apart at the seams and all kinds of problems are emerging.

I'm just not clear what those problems are. In the minute I've got I guess we can't get into that, but if we have the chance, I would like some more information about just what sort of difficulties have arisen so far.

Ms Diakun-Thibault: The judicial review and application and our motion are a matter of public record. There's a huge file that you can secure from the Ontario Court at your leisure. If anyone so desperately wishes to have their very own copy, I'd be happy to provide it.

Mr David Ramsay (Timiskaming): Thank you both very much for coming forward. Because of the length of your briefs, I was able to read them while the other parties were in discussion with you. I have to say I feel sorry about your experience in the commission. Obviously, it wasn't a happy time.

If any good is to come from this, I hope that certainly the government members have listened to this when hopefully they do come forward with some sort of proposal, because I think there has to be some replacement for this commission that they are repealing. You've given us some ideas and I'd certainly have to give them some further study, whether there would be an ombudsman-type system for the elderly.

What it does is point out, and I think the previous government had tried to do this also with education and training, where some of these organizations are perfect organizations in a perfect world, where you try to bring together a lot of people who have related interests but don't necessarily share a community of interests, you give them a lot of power and you give them a whack of money, and you throw them all into a room with a mandate and say, "We'll do what you prescribe to do, and what the government is telling you to do here, work on behalf of the people you believe in, and all of that," without allowing growth to happen, where that commonality of interests would need to mature, and under the pressure of having the power to be able to make immediate decisions and with all that money, it creates a pressure cooker.

If you are to embark on such a system such as this, it would seem to me what you'd need to do is to bring the people together who have that commonality of experience and let those relationships mature without giving them the power at first, and maybe start that group off in an advisory position with the intention that, as the group matures and those relationships mature and it looks like they are working effectively together, you start then to give them that mandate.

I think it's unfortunate that this thing just started up too big, too expensive and with such a scope of responsi-

bility that it maybe was doomed to fail, which is unfortunate, because I think all of us around here do believe in advocacy. We have just some different ideas about how we should go about it.

In the remaining time, if you had any other suggestions of how you would think we in opposition and what government should be proposing in regard to advocacy, I'd be interested to hear any other ideas you have.

Mr Klejman: You've touched a number of points and I'd say I agree with the element of participation at the community level, that the local level of individuals representing numerous sectors, not just from the vulnerable persons' side but also those who provide services, who need not just "education" and understanding but sensitization, I think has great potential.

It's difficult to do and there's a fair amount of recrimination that occurs during the initial stages, but that has to occur, besides the commitment through legislation that covers various professions, to truly impose a sense of expectation that to be a professional, whether it's a physician, a nurse, a social worker, there is an obligation within their responsibilities to recognize the rights, and the need to inform individuals of rights has to be built into the process.

We saw some examples during our short time of actually being on the commission, physically, examples in some communities where some of that dialogue was taking place, and we believe some of that work should continue. There's potential for that, much better to develop those kinds of communications and links at a local level than make assumptions that we can create one provincial body that'll run the show, particularly where there's a lack of prior awareness of the kinds of politics that come into play at the provincial level.

There are different degrees of sophistication, determination that different groups bring into this setting. What we saw on the commission is that the elderly groups were in effect losing control, no voice at the commission, and issues of numerically very small segments of our society were driving the process.

Ms Diakun-Thibault: If I were to ask for a favour of this committee and perhaps of government, it is that the next time such social policy legislation is being proposed or is contemplated, you take time to develop, first and foremost, a definition of what it is that you want to achieve. Advocacy never had a true definition. There is no definition in the legislation.

I have my own, out of experience and a studied definition of what advocacy could or should or might be. However, that was not what I saw when I was a commissioner. I think, if I were to ask each one of you now to write down on a sheet of paper what it is that you think advocacy is, you'd give me as many different answers: everything from social advocacy to legal advocacy to lobbying to political action committees. It would be anything and everything.

That's not what I believe was the intention or the intent the minister had in creating the Advocacy Commission. In my mind, I saw this as an opportunity for a lot of vulnerable persons to have a way, to have a system which would address their specific problems, their specific concerns, albeit not legalistically but at least in

a fashion where it would be professional, of high calibre and appropriate. Appropriateness is something that should always be first and foremost in mind.

I perhaps erred in my judgement, and it's unfortunate that the commission will be history. However, again, very honestly and very frankly, perhaps that is better for all of us and maybe we can revisit this notion of advocacy at some later date. I hope so.

The Chair: I thank you both very much for giving this commission an inside look at the workings of this commission.

Ms Diakun-Thibault: Thank you for your time.

Interjection.

The Chair: I'm sorry?

Mr Parker: You just called us a commission, but that's okay. We're watching you very carefully.

The Chair: Yes, I'm having difficulty today.

Mrs Boyd: Wednesdays don't seem to be a good day for you, Mr Chair.

The Chair: I'm sure the members will be assisting me along the way.

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AIDS ACTION NOW

The Chair: Our next submission is by AIDS Action Now, Maggie Atkinson and John Miller. Welcome.

Ms Maggie Atkinson: Thanks. I'll start. My name is Maggie Atkinson and I'm co-chair of AIDS Action Now. With me is John Miller, who's a member of the steering committee of AIDS Action Now.

First of all, I'll introduce AIDS Action Now and our mandate and then I'll begin to go through our brief, which I've just provided to you. Two things that I want to emphasize are that the rights to determine our own treatment must be delegable to our attorneys for personal care and also that the common law of consent, which is codified in this act, shouldn't be abridged by the act. Those are the two main points that I'll deal with. Then John will deal with the latter section of the brief, which deals with the definition of "partner," a creation of an offence for not complying with the act and changes to other legislation.

To begin, AIDS Action Now is a Toronto community-based activist group fighting for improved treatment, health care and support for people living with HIV and AIDS. Some of the fundamental principles which I think apply to Bill 19 are that we support the right to make decisions and choices relating to one's personal care and health care and to participate in the processes leading to such decisions and choices, which means a full participation in the informed consent process. In addition, we believe it's essential that each individual be able to delegate that authority and decision-making power to a person of one's own choice.

I'd like to make a few comments about AIDS and how that affects health care and treatment. First of all, I think many people are under the impression that with AIDS it's just a steady downhill decline to death. However, the opportunistic infections which can affect people with AIDS range in severity from mild and chronic illnesses to acute and life-threatening. A person can often go from

being at death's door at one point to recovering and being able to carry on their own life again. Concomitantly with this, a person's capacity can also fluctuate: At one point you may not be capable to make your own decisions and at another point you regain that capacity. I think there has to be flexibility in the way that substitute decision-making is carried out to accommodate that.

There's a wide range of opportunistic infections which require an equally wide range of treatments. The treatment of HIV is constantly evolving. It's a very difficult disease to treat and manage, and people with HIV are often very sensitive to the very treatments that we seek, so that a person's care is complicated by the fact that they're very sensitive to treatments and will often get adverse reactions. This makes the treatment of HIV very complex and it requires that the patient and the doctor work together to a coordinated plan in dealing with the infection.

Another important aspect of our care is that because it's a constantly evolving field of treatment, we often resort to experimental therapies and experimental uses of already approved drugs. This happens because the standard of care is changing more rapidly than the approved drugs through the regulatory system. At this time, people with AIDS, as well as people with other catastrophic illnesses, have a catastrophic right to decide to take treatments which aren't yet approved. This is provided federally, through the emergency drug release program, and it's essential that we be able to delegate this power to those who are substitute decision-makers. Unfortunately, the way the acts are drafted now, that right isn't delegable. That's one of our main points which I'll begin with, and it's set out on page 2.

There are actually two points here: First, a person with AIDS often has a very active role to play in the consent process and they make decisions on the advice of their physicians and often others, like treatment information counsellors. People with AIDS research treatments on their own and demand access to innovative and experimental treatments through various processes—clinical trials, compassionate access to drugs and the emergency drug release program. People with AIDS don't just passively consent to the treatment suggested by their physicians and they are quite often very active and request or demand access to drugs. For this reasons, the Substitute Decisions Act, which allows a delegation of have an ability to consent or refuse consent to treatment, is inadequate. It's imperative that people with AIDS be able to delegate, by power of attorney, the right to actively request or demand access to all forms of treatment.

We therefore recommend that subsection 46(8) be amended to allow for a request or demand of any treatment.

As I said, people with AIDS often need access to experimental treatments. On page 4 of the brief, we address this. The problem is that section 5 of the Health Care Consent Act states that nothing in the act affects the law relating to giving or refusing consent on another person's behalf to a procedure the primary purpose of which is research. Many people with AIDS rely on procedures which are experimental, through clinical trials, and we are concerned that this would be considered to be

treatment the primary purpose of which is research. People with AIDS need access to procedures the primary purpose of which is research. As a matter of fact, we do have access to that now. The problem is, we need to be able to delegate that ability to our substitute decision-makers.

For that reason, we suggest that section 46 of the Substitute Decisions Act be amended to allow a grantor to make a specific provision in the power of attorney to confer that authority on the attorney, and also that the Health Care Consent Act be amended to allow a health practitioner to provide that kind of procedure, the primary purpose of which is research, to an individual on the request or consent of the substitute decision-maker, the attorney for personal care.

With respect to the Substitute Decisions Act, I'd like to make a brief comment about what we saw as a procedural safeguard that was in the Substitute Decisions Act and that is being removed with Bill 19. That point is addressed on page 2 of our brief at the bottom, with "Execution." We support the requirement that is currently in the Substitute Decisions Act which requires that witnesses to the power of attorney for personal care must have no reason to believe that the grantor is incapable. We think that this helps provide some kind of protection against undue influence, but we don't think that it's overly onerous, because it doesn't put a positive duty on the witnesses to inquire as to the capacity. So they don't have to actually to test the grantor, but if anything seems suspicious or they have any reason to doubt the capacity, then they would be discouraged from signing it if this requirement were in place. So we think that this is a minimum safeguard for the grantor, especially considering that a lot of the safeguards that were put in place by the Advocacy Act have been taken away.

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With respect to the issue of consent, the act currently codifies the common law of consent, and we're concerned that there are a number of provisions in the Health Care Consent Act which limit our common-law rights to consent. The act reduces the individual's right to be consulted and informed in a number of instances. In particular, with the definition of "treatment," we are reducing the situations in which consent is required. In the definition of "treatment," and this is dealt with on page 3 of our brief, we object to the whittling away of areas that will require consent.

For example, in the act "a treatment that in the circumstances poses little or no risk of harm to the person" is taken away from requirements of consent. We're opposed to the exclusion of this because we feel it would be an abrogation of the common law. If there is little or no risk to the individual, that's up to the physician to determine, if there's no material risk in determining what information should be given to an individual. However, an individual should still have the right to determine whether they want, for example, a blood test or not. Your permission is still implicitly requested. It can't be just assumed that someone can go poking you in the arm and taking tests and so on just because there isn't a material risk. I think that it's a matter of law that touching without consent is tantamount to assault, and we think that there

still should be consent for even matters where there's no risk of harm.

"Anything prescribed by the regulations" could be removed from the consent requirements. We're concerned that is too vague and that there won't be adequate public scrutiny of matters that can be prescribed by regulation.

For these reasons, as we set out on page 4, we recommend that these particular clauses be deleted from the Health Care Consent Act. However, if the prescribed treatments are still to be included in the act, we would suggest that there must be clear criteria which must be satisfied before any particular treatment could be excluded by regulation.

The next thing I'd like to deal with is the issue of the plan of treatment and course of treatment, which is set out on page 6 of the brief. We object to the idea that a health practitioner can present a plan dealing with the whole gamut of illness that a person might have and get consent right at the beginning and not have to seek consent on an ongoing basis. We think that this is impractical, especially with a disease like AIDS, and if it's determined that this is something valid to put in the legislation, because there probably are times when it might be useful, we think that it would be necessary that an individual be advised that they don't actually have to consent all at once to a plan of treatment today to cover the next two years of treatment, but that if they would prefer, the doctor will consult with them or their substitute decision-maker as time goes on.

We're not so concerned with the individual who's capable, but we are concerned that a substitute decision-maker might be encouraged to agree to a plan of treatment now but wouldn't know what the condition of the patient was on an ongoing basis, wouldn't be apprised of how they are reacting to the treatment. I give an example here of a person with PCP, the AIDS-defining pneumonia. The treatment for it's fairly complex; there are at least four standard therapies for it. You can get all sorts of reactions to it. You may progress despite treatment and have to move on through the different options, and what options you want to take will depend on your state of health as you go on. Because if you've had two serious reactions to a drug, you might decide that you don't want to go on to an intravenous therapy, which may be even more toxic. I think it's impossible to determine at the outset which treatments you are going to want to follow; it's impossible to set a paradigm accurately.

Although a capable individual may be able to change their mind as time goes on, the substitute decision-maker may not be available at all times and be aware of the condition of the individual.

We are also concerned that the patient and the substitute decision-maker may feel under pressure to agree to such a plan. Therefore, we think it's essential that both for a plan of treatment and for a course of treatment the individuals be advised that they don't have to agree to the plan or the course but that they could be consulted on an ongoing basis.

One essential thing that I'd like to deal with is set out on page 5 of the brief, and that is that we are strongly opposed to the idea that consent doesn't need to be

sought if there's going to be a change of setting. We strongly feel that this would be against the best interests of the patient, that especially where there's a substitute decision-maker involved, the substitute decision-maker or the patient should be consulted before there's a change of setting, because this is material to the patient's care and any change should require consent.

I give the example that many people with AIDS live in the area of the Wellesley Hospital—that's where their friends and their acquaintances live, that's where their primary care physician is—and if a doctor decided to put them into a facility that was more remote, for example, even Sunnybrook might not be as accessible to the patient's friends and caregivers, and also if they were put in a hospital that might not be as approachable for people with AIDS. We feel this provision must be deleted from the act.

Also, another point on page 5 is that we feel that it should be made explicit that consent to treatment is a continuous process and that consent must be renewed if there's any material change to any of the matters in the act which constitute consent.

Now I'll turn it over to John.

Mr John Miller: I'll try to go through the remaining points quickly so that we can get to some questions. The first thing I'd like to deal with is the meaning of "partner" in subsection 18(9). When I was here last week listening to the presentation by the HIV legal clinic, there were some questions around this. Particularly Mr Clement, who isn't here, was wondering how to define "partner" without watering down the definition. It is our opinion that the definition of "partner" contained in the act is insufficient, and we recommend that the definition be changed to include "two people who are in a personal relationship that is of primary importance in both persons' lives."

There was some discussion about whether a residence was important, and how long. We believe that the really crucial issue is how important these people are in each other's lives, that solely defining someone's residence as a criterion is not adequate. It could mean that someone is a roommate who doesn't have this primary relationship for that person. However, there may be someone who isn't in residence who has been in a relationship for a period of time that isn't as long as some might think who is, and these people are of primary importance.

I give the example of a colleague of ours who died last year, who at a certain point during his illness looked like he was going to die. He subsequently did not die at that point, and his partner did not live with him and they had not yet been in a relationship for a year. If he had been deemed mentally incompetent and required a substitute decision-maker and hadn't had that explicitly set out, this law would not take that into account, and in fact his family was removed geographically from where they were. It wasn't even practical for them to become substitute decision-makers.

Again, we would suggest that the relationship of primary importance to both people is the crucial idea in this section and that that is the case for gay and straight relationships. This needs to apply across the board.

The second point is regarding the issue of offence under section 9 or 16. The Health Care Consent Act doesn't provide for any remedy or penalty for failure to comply with this requirement. I'd like to point out that a person can be charged if they're acting on a person's behalf under sections 80 and 82, but the doctor cannot, and although the provision is available through civil procedures to seek damages, this is quite onerous. We believe to give this legislation some teeth in this respect, the following provisions should be added to the miscellaneous section of part VI of the Health Care Consent Act:

"A health care practitioner who contravenes sections 9 or 16 of the act is guilty of an offense and is liable, on conviction, to a fine not exceeding \$10,000."

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The other two points relate to amendments to other statutes in part IV of Bill 19, the first relating to the Public Hospitals Act. For many people with HIV or AIDS, they have experienced discrimination in hospitals while receiving care. We feel that in the bill there should be an amendment which requires the Public Hospitals Act to have the effect of requiring all hospitals which are subject to the jurisdiction of the act to take all the necessary steps to implement all the policies and procedures that would be contained in this act and therefore have the effect of eliminating discrimination in the treatment and care of people with HIV and AIDS. As you can see, on page 8 of our brief under this section we have laid out our suggestion as to an amendment.

The second case is on that same page, at the bottom, regarding the Health Protection and Promotion Act. For a long time we have felt that there were some problems with this act with relation to the powers of a physician to treat someone in a case where the communicable disease is not treatable. For instance, in the case of HIV and AIDS, there is no known cure for the disease. So if the objective of the Health Protection and Promotion Act was to force someone—to treat them so they're no longer communicable, that isn't possible. I think this is an opportunity for the legislation to amend this part of the Health Protection and Promotion Act so that consent still is needed for other kinds of treatments. We feel that this is quite important in terms of the rights of people to determine their own course of treatment.

I give the example in particular of a pregnant woman who it is deemed that she is giving birth to a child and that there's a risk of transmission to the foetus and a doctor would force her to take AZT, a course of therapy which is thought to reduce the risk of transmission to the foetus, but it's quite controversial both in terms of the health of the mother and in terms of the health of the child. Under the provisions of the act, unless it's amended in the way we suggest, a pregnant mother in such a situation would not be asked for consent.

We suggest that subsection 67(1) of Bill 19 be amended by adding to the end of the proposed clause 22(5.1)(b) of the Health Protection and Promotion Act the following:

"However, no health practitioner shall administer any treatment pursuant to an order under this section without first obtaining the consent of the person where such

treatment will not render incommunicable the communicable disease or infectious agent which the order under this section is designed to address."

Mr Hastings: I guess my only question relates to your proposal of an additional civil remedy or penalty of \$10,000 in the act. What does it really accomplish when they already have access through the courts for civil remedies if the courts themselves are already bogged down in many instances and you'd end up having to have the case heard in one of the courts? Where do you end up getting any greater level of satisfaction in the penalty, except you have somebody with a fine now that they're convicted?

Won't it also dissuade additional health care practitioners from wanting to treat AIDS? I understand you're trying to get more physicians involved. If you penalize them, why, if I were a doctor, I'd say, "Why should I bother?"

Ms Atkinson: I don't think that applies just to people with AIDS, though. This would be a protection for all people under the act. So I don't think that it would particularly dissuade people. It's not as though this penalty would apply only when they're treating people with AIDS. If they didn't get appropriate consent from any individual, then they could be subject to this kind of fine. It seems odd that in the act there's a fine available to individuals but not to the physician, who actually is an educated individual who knows, through the professional code of conduct, that that's what their behaviour should be.

Mr Ramsay: Thank you very much for your presentation. I think you've given us some food for thought here on some areas that I would certainly encourage our critic next week to bring forward some amendments to the bill on, specifically on research. I thought that was very interesting. Why shouldn't somebody be able through a power of attorney to agree some time down the road that procedures that have a research nature be utilized?

I'm glad you brought forward maybe better clarification of the definition of "partners." Many of us were sort of satisfied that what was in the bill might be adequate, but you've brought some good points about a partner may not be somebody who cohabits with the other person, so that's something maybe we should consider.

Also, the change you've suggested that would make it imperative, by actually amending the Public Hospitals Act, that hospitals respect this law and recognize relationships that maybe some hospitals don't recognize, while it's not directly to this act, that's maybe something we need to look at. When it comes to something as simple as visitation, I know some people are restricted. So thanks for bringing those points forward.

Mr Miller: Can I make a comment on that? In fact, with respect to the issue of a partner, there may be some concern by some of the members that there would be something onerous that was placed on doctors to determine who was the partner. In fact, in different parts of the act, that isn't the case. I think the doctors are allowed to determine this based on a number of means which you've already outlined in the act. We don't believe that this will be an onerous thing to do but that it does really get to the teeth of the matter. You know, what is a

partner? A partnership is in a relationship of primary importance between two people. The other things are trappings which for some reason we define in our society, and they don't always work.

The second issue, with the Public Hospitals Act, as someone who's worked in the social services sector for several years—I'm currently the executive director at Trinity Hospice, where we take care of people who are terminally ill—I know that in terms of giving real credibility to ideas, you need to implement policies and procedures that have meaning within an institution. Otherwise, things don't happen, and that—

The Vice-Chair: Mr Miller, I'm sorry, I have to cut you off there. We have to move quickly to the NDP caucus for one question.

Mrs Boyd: Thank you for your presentation. I am very struck by your offence clause and I think you ask a very good question, why substitute decision-makers would be subjected to an offence clause and physicians wouldn't. I think it's a very good question that you ask.

I certainly would support your comments around the definition of "partner," while reminding you that if that definition doesn't change, then the obligation for the AIDS network is education around making sure that people have powers of attorney that actually take care of that and that's one of the other things.

I would say in relation to your issue around research, that opens the door in a way that frankly would be very, very unacceptable to most of the people who have come in front of this committee. Treatment for the purpose of research is one of the issues, particularly for psychiatric survivors, that's a very, very serious issue. So I think here again if in your personal care power of attorney you specify, given the nature of your condition, that you agree to experimental treatment, you agree to new drugs, and you give it as a continuing power of attorney to deal with the changed circumstances, that helps you. The changed circumstances that you're talking about are knowledge that the physician has that he hasn't shared with the patient. That happens a lot, and I think you make a very good point.

Ms Atkinson: When we talk about research or experimental procedures, we are limiting that to powers of attorney for personal care. We're not suggesting that all substitute decision-makers could consent to it.

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Mrs Boyd: But that personal care for people who have developmental handicaps, people who have psychiatric handicaps, would also be covered. It would not be acceptable to them, and I really don't think that we, however sympathetic we are to your point of view, could ever recommend an amendment like that.

Ms Atkinson: I'm just saying the amendment we would like is that persons could indicate in their power of attorney that they would like to have that provision, so it wouldn't be a blanket provision for all vulnerable adults.

Mrs Boyd: I don't think you even need to do that, because we believe the power of attorney allows that.

The Vice-Chair: I'm sorry, I'm going to have to stop you there. We are out of time. I apologize for that. Thank you for your presentation.

INTERNATIONAL ASSOCIATION FOR THE RIGHT TO EFFECTIVE TREATMENT

The Vice-Chair: The next presentation will be made by Dr Andrew Dalrymple from the International Association for the Right to Effective Treatment.

Dr Andrew Dalrymple: Thank you, Mr Chairman and honourable members of the standing, or should I say sitting, committee. I hope to leave lots of time for questions.

I'd like to point out, in direct contradistinction to the presentation made by Jennifer Chambers previously, that most of human behaviour is predicated on the basis of punishment or negative reinforcement, as anybody who's ever received a parking ticket outside this august chamber would know. It's a very effective and long-term way to ensure that you don't violate society's precepts.

This list of names on this form provided to you, who are the founding members of the International Association for the Right to Effective Treatment, consists of major editors of the major journals in terms of learning theory. Names such as B.F. Skinner may be familiar to you. Others such as Ivar Lovaas, who's developed the primary effective treatment for children with autism, and a number of other luminaries in the field of learning theory, would also support my contention that punishment is one of the prime ways we acquire knowledge and how we acquire conscience. Those who say this is not the case are sorely misguided.

I'm getting away from the text, but the text takes about five minutes to read, so I'll get back to it. Who here thinks that their paycheck is a reinforcer for work behaviour? Is it your paycheck that gets you out here to work every day? Is that what the contingency is? No, it's not. The contingency that brings you to work every day is that your paycheck establishes a certain standard of living that you're used to, and the threat of loss of that standard of living is what keeps you coming into work each day, as opposed to your paycheck reinforcing the particular kinds of behaviours that you exhibit. So it's threat of loss or negative reinforcement that we're talking about here, not positive primary reinforcement, and that's Fred Skinner's particular argument that I've always agreed with. B.F. Skinner is the founding father of the principles that I espouse today.

My name is Andrew Dalrymple, as I've said. I'm a certified psychologist and the chair of the Ontario chapter of this organization that lists these people. I wanted to get the philosophy statement exactly right, so I'd like to read it into the record. This is the considered opinion of this group of individuals:

"We view the right to the most effective treatment available to be the ultimate human right of each disabled individual. Technology exists now to help persons with physical handicaps, sensory impairments and behavioural excesses and deficits to achieve the highest potential quality of life. IARET is an educational and advocacy group established to ensure that all individuals with disabilities which manifest themselves in behaviour patterns that are highly unsocial, non-functional or potentially destructive, benefit from the most progressive, effective interventions available.

"It is our explicit mission to accept only those procedures with empirically verifiable, reliably repeated effects, and to make them available to all individuals with disabilities. Cosmetic attractiveness is not an acceptable substitute for demonstrable clinical effectiveness. We must therefore work towards educating the public as to what constitutes effective and acceptable treatment." Most of them consider that primary reinforcement is the primary treatment modality; there's no doubt about that, but in a very small percentage of cases it is necessary to use punitive techniques. "It is our belief that the least restrictive, effective treatment should always be employed, and that reinforcement and training aimed at teaching alternative and more socially appropriate behaviours should always be the primary focus of treatment. In cases in which a potentially intrusive intervention is to be used, we believe that the intervention should only be implemented after appropriate consent has been obtained from the individual, guardians or (if required by law) a court."

You'll have to excuse my shaking. I happen to have a disability. It's a neurological condition known as Parkinson's disease. So if I'm unclear, please let me know.

"The tolerance of non-treatment, mistreatment, inappropriate or inadequate treatment of severely impaired individuals violates the precepts of, and cannot be acceptable to, a highly developed, enlightened society. Our objective and obligation must be to provide effective treatment. This means a procedure, or combination of procedures, which most efficiently produces the greatest magnitude of change. This change should be in a direction which allows the individual to function most adaptively in the greatest number of situations, and which benefits the individual most over the course of their lifetime. For some persons the right to effective treatment is tantamount to the 'right to life'; for all persons it is the 'right to a better life.'"

IARET's membership consists of some 300 individuals and it covers 13 states. We only have one provincial chair and I happen to be that chair. We do have members from Nova Scotia, Quebec, Ontario, Manitoba and New Brunswick, most of whom are professionals engaged in the treatment of individuals with developmental disabilities and frequently with pervasive developmental disabilities: autism, severely disturbed-type children and serious behaviour disorders.

I am presenting this brief in strong support of Bill 19, in particular the provision within the bill which allows substitute consent for the application of aversive stimulation as part of a treatment package where individuals cannot consent for themselves.

Previously under Bill 109 and Bill 108, such consent could not be given except by the individuals themselves, and this resulted in a discriminatory, unequal availability of effective treatment. It is demonstrated that this is indeed effective and humane treatment—I want to emphasize that—effective treatment denied to developmentally disabled individuals. This lack of access to treatment has and will result in life-threatening situations for the few severely disturbed developmentally disabled individuals who need this treatment. The new provisions in Bill 19 that allow for parents to consent for such necessary

treatment are both humane and logical responses to the treatment needs of these very disturbed few. There probably would be only a couple of cases, two or three in Ontario, where such treatment might be warranted.

Advocates for non-aversive therapy will claim that this is demeaning and unnecessary and that we can treat all severe behaviour problems with positive treatment alternatives. They have never been able to prove this argument in either its generic form or in terms of the specifics of the case of Brian Singer.

My experience in the system—I've been working for 15 years now with these kinds of children and it's extensive—the literature and the group homes in the province of Ontario, my experience with those as well, is that there are many treatment failures masquerading as success. Often because people are not qualified and are unable to access qualified psychological support, people with severely injurious behaviours are left in chronic, four-point restraints or under extreme chemical sedation rather than attempting to liberate them by means of controlled application of aversives.

The specific example of Brian Singer shows how less than a total of a few minutes of faradic stimulation—shock, if you will—can result in massive positive changes in his quality of life, a quality of life that would otherwise be restricted to the gentle, mothering arms of a straitjacket. There is no ethical dilemma here. I do not feel that we have dehumanized, derogated or humiliated Brian in the least. Rather, he has been provided a safe, humane, appropriate treatment.

I support the need for close monitoring and ethical review of the treatment course provided to such individuals. I have complete faith in the parents of these children, as part of a treatment team, to decide and monitor treatment effects, side-effects and unintended effects. These parents are also expected to, and should participate in, due process review and examination of their child's status at regular intervals.

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The proponents of non-aversive alternatives might imply that allowing one child to be treated in this fashion is the slippery slope or the foot in the door that would allow for many more children to be treated this way. I've had some input into the stringent standards laid out in Ontario, and some commentary through my other role as the chairman of the Ontario association on developmental disabilities, a professional organization. I'm no longer chair of that organization, but my past experience with the standards and restrictions of this therapy to specific sites, one site in particular now, is sufficient to ensure that this does not happen. This does not mean that those children who are treated cannot be monitored in the community by suitable safeguards in some institutional structure.

I am more concerned that there are many individuals living in the community who are not receiving proper or effective treatment because of the chill that previous legislation and previous misguided advocacy efforts has had upon the treatment community. Ideology should not drive the treatment process any more than religious concepts of good or evil should drive the justice system. Evidence, evaluation, experimentation, replication, gener-

alization and observation should form the basis for each treatment we accept. Ideology alone results in injustice.

The provisions in Bill 19 that allow for parents to consent for shock treatment of their incapable children must stand. They will save at least one life.

Mr Ramsay: Doctor, thank you very much for your submission today. Elinor Caplan, the critic in this area, and I will be looking through that this week in anticipation of moving amendments in clause-by-clause.

Mrs Boyd: Thank you for coming, Dr Dalrymple. I assure you that in no way was your communication affected. You're a passionate defender of the procedure you're here to talk about.

You can appreciate that we've spent the last three weeks listening to people talking about treatments that were defended just as passionately, by psychiatrists in particular and psychologists in years past, treatments like insulin therapy or electroshock therapy in psychiatric institutions. I hope you appreciate that we have a certain lack of acceptance necessarily of what one says is the only treatment available and is saving hundreds of lives. We've heard that before about treatments.

I think we need from you a little understanding that this isn't strictly an ideological position around this particular treatment. It is based on a good deal of concern—I have to assume they are errors meant in good faith—around treatment before and that objections to that kind of treatment have been greeted with exactly as much horror as you are meeting with the objections to this particular treatment. I think that's something that ought to be at least recognized.

You say in your brief that you think there need to be all these controls on this kind of treatment, and I'm glad to hear that. If it were to be permitted, it would need controls. There are no controls in Bill 19. It could be done anywhere, anytime and agreed to by any parent. There is nothing in this legislation that guarantees people that there are going to be any controls. At the very least, I can assure you, we would be wanting to bring forward amendments that would clearly control this, because otherwise there's a whole population out there that is very fearful and very angry that this might be allowed. We have heard very passionate views on the other side.

You say here that there ought to be legal provisions for guardians and/or the courts to approve. I would suggest to you that if it is as rare as you seem to be saying—you seem to be saying it's rare—

Dr Dalrymple: It is.

Mrs Boyd: —but then in your last paragraphs you say there are lots of people in the community who could be helped by this. I run into real problems, because we've heard this from other people.

Dr Dalrymple: The distinction that needs to be drawn there is between the banning of all aversive procedures as opposed to the single therapy I'm trying to consider here, which is the use of aversive electric shock.

Mrs Boyd: But there's no question of a banning—

Dr Dalrymple: Electric shock would only be considered in a very tiny percentage of cases.

Mrs Boyd: So you think it would be reasonable for one of the provisions to be that there needs to be an application to the court and an agreement by the court

that it is the last resort. Would you agree that there need to be some guidelines in there about the circumstances under which it could be done?

One of the presenters here seemed to admit quite freely that it would be quite probable that he would agree to do it in his office, if it were allowed. That really gave us a lot of concern. Do you agree that we need to build some protections in here if it is going to be allowed?

Dr Dalrymple: If you look at the situation at Cedar Springs, Pancho Barrera's program, there are sufficient controls and review processes available in that institution to ensure that there is no abuse of this particular therapy.

Mrs Boyd: That's true, but they were only won through very hard advocacy work on behalf of those who disagreed with the treatment.

Dr Dalrymple: And on behalf of those who agreed with the treatment, such as myself, who also recommended those particular controls. I wouldn't characterize the controls placed upon this as being won by the advocates of positive therapy only. We also want stringent oversight of these procedures as a responsible therapist.

Mrs Boyd: So you do think that Bill 19 ought not to just give a blanket approval of this but should indicate that there are conditions under which it might be appropriate for a substitute decision-maker to make that decision?

Dr Dalrymple: I think there are sufficient oversight mechanisms available at Cedar Springs to allow for the provision of—

Mrs Boyd: You're not understanding me. There is nothing in this legislation that restricts this to Cedar Springs. We have had people in front of us saying that they want parents to be able to make that decision and to offer this treatment in their office.

Dr Dalrymple: But I think they should be hooked in with the oversight structures of the institutional system.

Mrs Boyd: I agree with you.

Mrs Johns: You'll appreciate that this is a controversial issue. I have a number of questions I want to ask you, so if you could give me the facts and we can move forward on each of them, I would really appreciate that.

First of all, I want to comment that I'm interested in checking Hansard from that gentleman. I'm unsure about whether he was talking about consenting capable adults or incapable children with parents who were consenting for them. The Hansard isn't out yet. Mrs Boyd and I may well disagree about how we heard it. I'd want to check that first, then we'll come back to that and I may have some other questions I'll have to ask—

Dr Dalrymple: I wasn't here, so I don't know.

Mrs Johns: I need to know, to fill out my education on this, the difference between what treatment is with respect to what's happening with Brian Singer, for example, versus what research is. What's happening to Brian? Is that a treatment? Is that research? What's the process? Tell me about that.

Dr Dalrymple: I suggest that what's happening with Brian Singer is treatment, that what we have is an already established therapeutic modality that's being applied in known ways with predictable results and is being monitored for side-effects and other unintended effects. We're not operating in a void here. There is a whole body of re-

search which actually demonstrates that these procedures are effective for a certain small number of individuals.

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Mrs Johns: How is the treatment controlled? How do we know that this isn't a horrible treatment that isn't helping Brian in any way? And how did he evolve to get to this process, that you know this is the only treatment that will help him?

Dr Dalrymple: I think Brian had been run through the mill in terms of the alternative therapies, many of which are entirely discredited, such as gentle teaching and so on and so forth. There were many positive efforts made in Brian's history to reinforce, shape and change behaviours, most of which failed. This was indeed one of a series of very many placements; he'd finally come to the point where there was consideration that this should be attempted, and in fact in turned out that it was very effective for this individual, and it was attempted under strict controls.

Mrs Johns: There is some talk that there were four, five, six people on this treatment when it was changed under the previous government and that only one has had to come back to that. Can you talk about that process? Was that not the right process for the other five people or what has happened to those other five?

Dr Dalrymple: I can't comment specifically on other cases in the system. Some may still require this particular therapy to achieve pre-treatment levels of independence and functioning that they'd achieved previously. It is also possible that, with additional efforts, some alternatives have been found for these individuals. But I'm not in possession of all the facts, so I can't really comment on those cases.

Mrs Johns: I need to ask you a question about your last page. I circled the same thing Mrs Boyd did. You start the paragraph by saying, "I am more concerned that there are many individuals living in the community who are not receiving proper nor effective treatment because of the chill that the previous legislation" put into effect. Are you saying lots of people would be on faradaic stimulation if you had your—if we took this away?

Dr Dalrymple: If I had my way? No.

Mrs Johns: Well, if anybody has their way. We need to know that.

Dr Dalrymple: There are a number of people who are not receiving treatments which might be minimally aversive, such as time out or other forms of aversive—

Mrs Johns: Time out is like when I put my kid in the corner and say, "You have a time out"?

Dr Dalrymple: That's correct, that kind of thing. They don't have structured therapeutic programs, well-designed programs. All these programs should include a strong positive base of training and reinforcement. Nobody is saying that you use just an aversive in and of itself. What you need are well-structured behavioural interventions or packages of treatment that might at certain points in time include an aversive component, perhaps a removal of a previously granted reward or a time out from an enjoyable situation if behaviour so warrants.

But what I am saying is there's been a survey of individuals who are duly diagnosed across this province. I haven't seen it released yet, but I hear there is a number

of people who are actually—I think the previous government commissioned the survey and it hasn't been released. Are you aware of this survey?

Mrs Boyd: No.

The Vice-Chair: I'm sorry. We are going to have to stop you there. We've run out of time.

Dr Dalrymple: There do seem to be many instances of individuals who are not receiving suitable treatment in group homes. Thank you.

Mrs Johns: So the 100 are just people who would require some punitive—

Dr Dalrymple: No, some structured behavioural intervention, not necessarily punitive.

The Vice-Chair: Doctor, on behalf of the committee, thank you for your presentation.

CITY OF TORONTO COMMITTEE ON THE STATUS OF WOMEN

The Vice-Chair: The next presentation will be Audrey Swail, the City of Toronto Committee on the Status of Women, employment equity division. Please identify yourself for Hansard, and you've got 30 minutes for your presentation.

Ms Audrey Swail: Hello. I thank you for this opportunity for us to come today and present our response to Bill 19. I am Audrey Swail, and I represent the Committee on the Status of Women for the city of Toronto. With me is Jane Koster, who is also a long-term member of this committee. I believe you have our brief; I will be referring to that through most of my presentation.

The City of Toronto Committee on the Status of Women is a permanent committee of Toronto city council, and we report to council through the Neighbourhoods committee. We were established in 1991, and the committee consists of 15 volunteer members from the community, three members of council and the mayor. We're non-partisan and we represent the full range of political views, but we certainly come together on the view that we promote the equality and the quality of life for women in Ontario and the city of Toronto.

I'll begin by referring to a question you might be asking, that is, why is advocacy a women's issue? It may not be immediately clear. We work from the basis that we value the framing of issues and power and vulnerability, and we root our work from a social justice perspective. That means we strive for a fairer and more just world for women, and also for men and children.

We want to speak to you today because we're alarmed by this government in some of the approaches it's taking, particularly in this bill. A large number of vulnerable people—people with moderate to severe disability and those who are frail and elderly—a disproportionately high number of these people are women, for a variety of reasons. One of the reasons is that women live longer, and I think most of us know the demographic statistic there, but there are other reasons. Women are much more likely to be in positions of financial stress or poverty, particularly disabled women but also women who are elderly and frail, for a number of reasons that you've probably heard from status of women councils and advisory groups in the past; that is, that discrimination in

the workplace is one of the reasons why, over time, women are not as able to prepare for a secure older age.

As to women with disabilities, I remember at one point in the early 1980s when I went to a conference sponsored by DAWN, the Disabled Women's Network, an advocacy group for disabled women which I understand has just had to close its doors. That group at that time held a conference on all the issues facing disabled women, but the shock to me, because I thought I really was very much up on these issues, was that women with disabilities are at least twice as likely to have experienced sexual and physical abuse in their care. That's quite shocking.

A large number of people considered vulnerable also have psychiatric histories. Women are also overrepresented in this system, and the number of people experiencing mental health problems is high for women. Violence against women is one of the factors that contributes to increased vulnerability. For example, many women have mental health difficulties directly resulting from violence and abuse that they have experienced earlier in their lives.

The high rate of women psychiatric survivors is particularly evident these days in the Toronto area, where as the result of the deinstitutionalization that started over a decade ago, many of these women find themselves out in the community with little or no support, and increasingly homeless.

I'd like to talk now about the need for independent rights advice. By the way, I'll be primarily addressing the Advocacy Act, the impact of the repeal of the Advocacy Act. I will not be taking a legal and professional perspective; those were very well done by the Advocacy Centre for the Elderly and the Ontario Association of Professional Social Workers and other groups that addressed these in great detail, and we support many of their recommendations. I'm going to really focus on advocacy.

With respect to rights advice, the majority of the Advocacy Commission's rights advice, 78%, is under the Mental Health Act. I guess that is really still there, primarily for people who are being made involuntary patients, and these are people who, for a short time, can be held without their approval. Once again, as women are overrepresented in the psychiatric system, the Committee on the Status of Women is concerned about the new proposals regarding rights advice, as a social justice issue broadly and also as an issue affecting women in particular.

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We're concerned that as a result of the proposals in Bill 19, rights advice will not be mandatory and will not be independent. Those are the two factors that we think are essential that we will be missing if Bill 19 goes forward as it is. We're concerned about that. Having staff of the public guardian and trustee and health providers giving rights advice is a conflict of interest. We don't believe that is neutral enough and unbiased enough.

We're also concerned about that the question of how rights advice will be provided under the Mental Health Act has not really been addressed. When the Advocacy Act is repealed—there's no reference to this. Currently, it's provided in the 10 provincially operated psychiatric hospitals by staff of the Psychiatric Patient Advocate

Office; the PPAO provides this now. There's no reference to how people will get this help outside of the PPAO. We would like the government to address that.

We certainly support independent rights advice being provided, and that could be done without huge expense, we feel, by utilizing the non-profit community sector. We understand that this bill was criticized because it was perceived as being overly bureaucratic and costly. We're asking, instead of repealing the bill, why not make amendments that would take out those elements of greatest concern? Rather than completely repeal the bill, it could possibly be amended or something could be put in its place.

I would like to move on now to the need for advocacy services for vulnerable people. It's our firm belief, based on our experience in the community, that there is a tremendous need for advocacy services in the province, and you're probably hearing that from many, many groups. It's estimated that there are 300,000 vulnerable people; there probably are more. Vulnerable people are simply not able to exercise the rights that many of us take for granted. We go around every day with a sense of our inalienable rights. They are intrinsic, and we make decisions on our own behalf. But any one of us within a moment's notice could suddenly be put in a position where we would be extremely vulnerable, and all of a sudden those rights would be questioned and we would not be so assured of them. Maybe then we could understand what it feels like.

Many vulnerable people are often afraid to exercise their rights even if they know these rights. They may not even know that they have a right in some cases, and if they do they are afraid of exercising rights. People feel somewhat powerless when their everyday care, or even aspects of that care, is dependent on other people. Even when those are loving family members, there is some fear of questioning decisions that might be made on their own behalf. In the brief, we have given you a quote from a psychiatric survivor as she sees this, and I would appreciate that you look over that.

Another aspect is that vulnerable people may come to accept abuse and neglect as a natural price for the help they are receiving: food, shelter, physical care. Society has a responsibility not only to protect these people, but also, to live up to their potential, vulnerable people must be able to know what their potential is and get that help when they need it.

Advocacy services are not about telling vulnerable people what to do or even telling the caregivers what to do. Very often advocates go out and talk and mediate and help resolve a dispute or a difference of opinion rather than always telling people what to do. It isn't a matter of intruding so much as protecting and being sensitive. Much of the work of advocate advisers has been to educate. In talking to people from my profession, social work, people were telling me they gained a great deal from having the advocacy office there, with people coming out and actually improving the communication between them and the people they were helping.

The need for advocacy services in this province was acknowledged by all parties, Conservative, Liberal and NDP. These issues came up in the early 1980s, as I was

saying earlier; I was a policy adviser in the early 1980s in the provincial government, and we were addressing some of these issues then. A plan describing the need for advocacy and the way in which it could be carried out was presented to the government in 1987. In fact, there were three different government documents at that time, one of them being Father Sean O'Sullivan's report, *You've Got a Friend*. That report was written to address the tragic deaths of vulnerable people and issues raised in subsequent coroner's inquests, and there were some quite shocking incidents at that time.

None of those societal problems has completely gone away. Many of them are still with us; some are worse. The report identified the poverty, lack of housing, lack of services, abuse and neglect faced by vulnerable people, and these are still there, probably more so. As I mentioned earlier, a program like DAWN, just an excellent community advocacy group for disabled, has closed its doors, and I haven't had the opportunity to call around and find out how many other support services are either on the brink of being closed or are struggling, or whatever's happening to them. If anything, the issues identified in that report have worsened today.

We would like to comment on the myth that vulnerable people can simply rely on family support. We're not bashing families. We do say, though, that many people, families and caregivers, are practically saints, give a great deal of themselves, but unfortunately this is not always the case. We wish to point out that the notion of families being composed always of loving, caring people who support and comfort vulnerable family members is a problem. In the last 15 years, we have begun to recognize the level of violence against women right in their home. Many of us have come to realize that for many women and children, the home can be a dangerous place. This has been shown by reports of the prevalence of elder abuse and violence against people with disabilities.

When we say we want to depend on the family, want to trust the family, I think that should be the first order, but I would remind us that families are under tremendous stress these days, scattered geographically, under financial stress, and that the people who are taking care, either directly in their home or those living in other homes, in institutions or in more sheltered areas—most people around this table, possibly, are having some stress with the care of people in our families who have some form of disability or are frail elderly. The stresses are enormous and getting greater, and the families need support and help.

When the Advocacy Act was passed by the previous government, many people, particularly those who had long been calling for change, hoped this would make a difference. It made some difference, possibly. It wasn't perfect, but we really didn't get much chance to find out to what extent it was going to resolve some of the problems. We'll never really know that, as it's being repealed.

What we would like to see: I understand that back in July, the government said that while there would be a repeal of this act, there was a continuing support for advocacy and the role of government in advocacy and the need for advocacy. More recently, but just very recently, I understand there are consultations going on with

families and people in the community and professionals, caregivers, around what might be done around the advocacy issue. It's good that that's happening, but it seems to be a little late. If this was thought in July, why would this not be part of the Bill 19 package?

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Something in Bill 19 should be alluding to the fact that if we're not keeping the Advocacy Act, if we're not making amendments, we're not creating new statutes, at the very minimum there should be some reference to how advocacy will be a continuing responsibility for this government. Somehow, there should be something statutory or regulatory that refers to that.

I'll summarize what I think the city of Toronto Committee on the Status of Women is looking for from this committee, from this government.

(1) We want government to provide funding and some form of sanctions that ensure that a system of advocacy exists and is effective for the protection of all vulnerable people against abuse and neglect in this province.

(2) We want the government to provide some form of funding and support for systemic advocacy. That's a role where it's not just case by case and complaint by complaint, but looking at whole systems and seeing how they contribute to the unnecessary vulnerability of these people. We want to look at systems as well, so I ask that the government support systemic advocacy directed towards changing systems and attitudes that put vulnerable people at risk, possibly assigning this responsibility to the non-profit community sector, and providing training, education and the supervision of volunteer advocates.

(3) Ensure that the provision of rights advice to vulnerable people be unbiased and neutral so that there is no conflict of interest between vulnerable people and those empowered to make decisions about critical aspects of their lives.

I want to thank you for giving us this time to make our presentation, and I would now welcome your questions.

Mr Marchese: Thank you for your submission. Much of what you say has been said by many, but we appreciate that, because each one brings their own new experience relative to where they are and the kind of work they've done. In that regard, you emphasize the kind of need that people have been talking about.

Your comment around systemic work and systemic advocacy is something we agree with. If you don't deal with that, it's hit and miss; it's waiting for someone with a complaint and then finding someone who will deal with it. If we don't deal with systemic work, we've got a problem. That's why the commission was set up, in effect, to deal with systemic issues—one of the reasons.

We hope the government members will listen to the fact that we need rights advisers, which you talk about, and that they should be independent. That's been a constant theme of many, many presenters.

Let me ask you some questions, because we hear different things from different people. Did you find that the Advocacy Act or rights advisers or the commission itself were, in your view and experience or from what you heard, intrusive, adversarial or bureaucratic in any way?

Ms Swail: I have to acknowledge that there were complaints. A lot of people said it was complicated and not always easily understood by the public. It's very important when we make laws that they can be very readily understood and interpreted and acted upon. One of the complaints I would hear is that people thought, rightly or wrongly, that people would be coming into their lives, into their homes, into their institutions and telling them what to do. In fact, there were all kinds of safeguards against that, but that was not the message people were getting, and I have to say there were complaints. I have to acknowledge that.

Mr Marchese: We appreciate that, and you said in response to that, "If you, government, have a problem with that, whatever complaints you may have heard, which may have been real, deal with them and propose something in its place," either in its entirety or something that deals with its particular parts, but keep the system intact because that's what people have asked for in the last 15 years that we've been hearing people's concerns.

You say two things. One is education. We've heard that as well. A lot of groups have said, "Before you put this out again"—and this applies to all governments; we've all failed in this regard. Education needs to take place so people are properly informed.

I want to agree with one comment before the time runs out, that is, that the government really has a responsibility to tell us what it is they want to replace this Advocacy Act with, not to have us wait until sometime in the future for something that leaves us completely without anything in its place or without anything for people to comment on. Do you agree?

Ms Swail: I hope that is the message we've conveyed in our brief.

Mr Ed Doyle (Wentworth East): Thank you for your presentation. It was very thoughtful and well prepared. You paraphrased Father Sean O'Sullivan's You've Got a Friend, and I'd like to read from your brief.

"We agree with Father O'Sullivan's statement in You've Got a Friend 'that primary responsibility for advocacy must remain with us as individual citizens, as families, as friends and as neighbours of Ontario's vulnerable population. Primary responsibility for advocacy education and the development and support of advocacy services is the proper role of government.' To that end, we support the recommendations of the Ontario Advocacy Commission with respect to further advocacy initiatives."

Basically, this is really why we're here, to see if we can implement these things in the way that is most effective and in a way that has meaning, perhaps in a way that is not quite so expensive because of the bureaucracies that have been building up in government today. I'm wondering if you can explain to us whether you have any ideas about what role the advocacy organization could take, because that's one of the things we're truly interested in seeing.

Ms Jane Koster: We don't have a problem with the use of volunteers as advocates—absolutely. I think we all know that volunteers are very committed and capable of doing a really good job. But it's necessary for them to have effective training, and an advocate can only be

effective if they know things about laws and regulations and all those kinds of things that vulnerable people get caught up in. That's why it's necessary to have money to provide training for advocates on behalf of vulnerable people; also to do public education about attitudes towards people with disabilities and elderly people etc; and to conduct systemic advocacy. That's what we would see the money needing to be spent on: training, systemic advocacy and education.

Mr Doyle: Earlier in your brief, you mentioned the need for independent rights advice and expressed some concern about this. This is a question that of course has come up consistently throughout these hearings, the issue of who should be giving these rights. Would you feel that perhaps the health care providers should be—for example, the College of Physicians and Surgeons. Do you think they should be placed in the position where they should be telling patients what their rights are?

Ms Koster: No. I think that's a conflict of interest, for the same person who is the service provider to also express your rights to you. No, we see that as a conflict of interest.

Mr Doyle: So you would prefer that that not be done by somebody in the medical profession even if safeguards were put in through, for example, the College of Physicians and Surgeons.

Ms Koster: I think the issue here has a lot to do with perception. Patients will be unlikely to say, after their rights have been explained to them by a health care professional, "Yes, I'd like to go to a review board hearing," because they're going to be afraid to do that. These are people who have power over them. In particular, doctors are held in a lot of esteem in our society and a lot of people are afraid of questioning doctors.

1550

The Chair: Thank you, Mr Doyle. Mr Ramsay? Actually, Mr Brown. Sorry.

Mr Michael Brown: We all look alike. Thank you, Mr Chair—I think.

I appreciate your presentation. As I went through, the first thing that struck me was that I hadn't seen the number 300,000 before. Maybe it's been there, but I haven't seen it. One of the things that strikes me about all this legislation that causes all of us some problems is that 300,000 in this province is a relatively small number, but each of us can be touched by that. Either we ourselves will become vulnerable or some friend or family member will. That experience will probably touch us all.

I'm interested in pursuing the area of education, how you educate a population about these issues. We had some suggestions yesterday from some people about how that might be done. How would you see that happening?

Ms Swail: We talk about respite support for people looking after very sick people. For people who are looking after others, particularly if those people are very dependent, it can be a very stressful situation and they need those supports and help. They also can get education and training in how to deal effectively, how to maximize the autonomy of the person they're helping, without making it unmanageable. I think the training can be done by professionals for professionals, but it can also be wider than that and deal with families as well, helping

families and general caregivers understand that just because somebody has a physical disability in one area, it doesn't mean they're totally disabled, or if they are, that they're not able to mentally handle making decisions. They still need some way of feeling some autonomy and some self-respect.

Ms Koster: Our society for a long time had a very paternalistic attitude towards people with disabilities and towards frail elderly people. That's one of the things we need to work to raise people's consciousness about and to move towards seeing people with disabilities as people who for the most part can have autonomy and should be treated with the respect everyone deserves.

In terms of the 300,000 vulnerable people, we should point out that that statistic represents people who have a severe to moderate disability, have difficulty expressing their wishes, making their rights known. This is not the figure for all people with disabilities in the province. This specifically takes up very vulnerable people, primarily people with developmental disabilities, head injuries and psychiatric disabilities.

Mr Michael Brown: From my own experience, many people who become vulnerable—I'm thinking probably of the aged or people with a progressive disease. It's very difficult in your own family to understand when the lines get crossed, when competency is a question and when it isn't. How do you educate the broad population about those kinds of issues and what rights the vulnerable person has in that situation? Do you have any suggestions along those lines? After all, the government tells us they're interested.

Ms Swail: I think it takes consulting with a wide a range of people and coming up with guidelines that are flexible enough to relate to a wide range of people—simply some standards. I saw there were some definitions added around people who were not competent to make decisions. I read that and thought, "Some days, that could be me." It depends on whether we're talking about how to make my VCR work versus everyday decisions. There are times when I might feel I'm not competent to make decisions.

There needs to be great care taken. There has been a lot of work in this area which I would want us to build on and not spend money redoing. We can learn from some of the reports of the past. And I think consultation is very important. The government is now getting into consultation. My question is, why now, and why wasn't that happening long enough ago so that as this bill goes forward, the issue of advocacy would have been adequately addressed?

The Chair: Thank you both very much for your presentation today.

TORONTO PEOPLE WITH AIDS FOUNDATION

The Chair: Our next submission is from the Toronto People with AIDS Foundation. Welcome.

Mr Eric Andrew Dow: I'm Eric Andrew Dow, the executive director of the Toronto People with AIDS Foundation.

Ms Tracy Ribble: I'm Tracy Ribble, and I'm an employee from the Toronto People With AIDS Foundation and Positive Youth Outreach and PASAN.

Mr Dow: The Toronto People With AIDS Foundation is the largest direct-service, consumer-driven AIDS organization in Ontario. We advocate on behalf of over 10,000 men, women and children living with HIV and AIDS. We provide direct services to over 4,000 clients who have become unable to work due to health concerns.

Before we begin discussing Bill 19, we want to take a brief moment in this presentation to brief this committee on the negative effects thus far with the passing of Bill 26.

An average client of the Toronto People With AIDS Foundation is an individual who has become impoverished due to HIV illness. Because governments allow insurance companies to discriminate against people living with HIV and AIDS, these individuals do not always have access to private insurance. These individuals rely on the Ontario drug benefit plan for basic medications. These medications are limited in helping to maintain health at current levels.

Bill 26 has allowed the introduction of copayments. We refer to these copayments as taxes on the poor. An understanding of these copayments in action shows how this tax on the poor, the disabled and the vulnerable can be devastating.

An average client of the Toronto People With AIDS Foundation requires the use of at least four medications per month. Each prescription costs our clients a tax of \$2, or \$8 per month. The Ontario drug benefit program allows for prescriptions to be filled on a monthly basis only. If the medication needs to be taken long-term, the individual must pay this tax each and every month. With 4,000 clients who are impoverished, this tax costs our impoverished clients \$32,000 per month, or \$384,000 per year.

We present this example to you so that you may understand the realities of living with HIV and AIDS in Ontario today. We hope you will listen to the concerns these presentations bring to your attention. We hope you will adjust and amend the legislative changes you propose and take into consideration the concerns of the public, of vulnerable communities and of individuals and people living with HIV and AIDS.

With Bill 26 you asked Ontarians for a blank cheque. You asked us to trust the government. You promised that your intentions were honourable. In clause-by-clause considerations, government responses asked for power without explanation of why these powers were needed or how these powers would be implemented. I tell you that the intentions and realities have diverged.

With Bill 19 you are asking for a blank death certificate. I am not willing to give you the opportunity to write my name nor the names of our members, people living with HIV and AIDS, on this death certificate.

Our concerns with Bill 19 are many. We have concerns with definitions and changes to definitions. We have concerns with the lack of basic rights for vulnerable people.

The concerns we have time to address in our limited presentation will concentrate on the three following issues: (1) the need for individual and systemic advocacy; (2) the right an individual has to be informed of a determination of incapacity and the process for appeal; (3) the

need for a true consultation process with front-line workers and elected representatives of vulnerable populations.

I'm really not nervous. I have PCP, so it makes it difficult to breathe.

We support the October 1995 principles of the Ontario Advocacy Coalition. In particular, we support the points:

(1) The advocacy system must be governed by representatives of the vulnerable people it is designed to serve.

(2) The advocacy system should set a high priority on the identification and development of the potential of the community to create and conduct its own advocacy initiatives.

(3) Advocates must respect and promote the capacity of individuals and groups to help themselves, including the capacity to engage in self-advocacy.

(4) Advocates must, with the consent of the vulnerable person, be able to see records kept about that person that may reveal important facts about the person's situation. This authority carries with it a corresponding duty of confidentiality.

(5) Advocates should themselves, to a very significant extent, be drawn from the ranks of those who have personal experience of vulnerability.

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At the Toronto People with AIDS Foundation, 75% of our staff and our board of directors are people living with HIV and AIDS. We have certain positions, such as the executive director, that are designated for people living with HIV and AIDS.

The word "advocate" has been removed as a definition; the word "advocate" will no longer appear in the act. Bill 19 does not legislate the role for an advocate in advising a person who is to be deprived of his or her rights for self-determination. This change is not acceptable from the viewpoint of the foundation.

The Toronto People with AIDS Foundation has been involved and continues to be involved in issues of individual and systemic advocacy. As a truly consumer-driven, peer advocacy group, we have found a great deal of success in issues of individual advocacy. Where we need support from the government is in the area of systemic advocacy. A central advocacy office which can funnel systemic advocacy issues is key to the success of systemic advocacy. The proposal brought to your attention addressing changes to the Advocacy Commission is a step in the right direction. A central contact can collect information on individual advocacy and identify trends where systemic advocacy can make real changes in the system.

Around issues of capacity, we understand that the requirement for the assessor to explain the process and acquire agreement for an assessment can be found in part IV of the Substitute Decisions Act. However, with this understanding, we have concerns that thus far the government response to questions around this issue suggests that this requirement is not clear. Clarification of this issue is recommended. Further, a debate seems to be continuing with regard to appropriate notification of a finding of incapacity.

We ask this question of the government: If an assessor is required to explain the process and acquire agreement for assessment of capacity, why are the findings of this

assessment not also required? If the individual understands the process of determination and agrees to the assessment, that same individual has the right to be informed of the results of the assessment. There is no question that notification of incapacity is a fundamental right of the individual being determined incapable.

Further to notification of incapacity, rights advice must follow. An individual must be guaranteed their right to access to appeal. Without these fundamental rights, consent to assessment must be discouraged. Assessments may become non-existent. The issue of capacity will become a moot point.

Consultations: As we appreciate the opportunity to address this committee, we wonder why we were not consulted before the legislation was drafted. As with Bill 26, Bill 19 has been brought forward without the input of many individuals, communities and advocates of the vulnerable. We are the people who are directly affected by these changes. We should be part of a process for their development.

The appearance given to some of us in the disabled community is that you are not interested in our issues. As a government, your actions are quick, but are they true? As a government, you seem to believe that cost-effectiveness means cost cutting. This is not our experience.

Over the years, many individuals living with HIV and AIDS have worked with different governments to ensure the protection of the vulnerable people living with HIV and AIDS. Some of these individuals who are no longer with us include David Kendall, Gary Thorton, James Thatcher and Brian Farlinger.

With the changes you propose in Bill 19, you are asking for more than a blank cheque; you are asking for a blank death certificate. I hope that in five years another advocate needs to present before a similar committee because my name has been added to the list of advocates who weren't heard and my name appears on the death certificate you ask me to entrust to you.

We also have concerns about definitions, but we wanted to open it up to questions a lot faster than other groups have been able to do.

Mr Parker: Mr Chairman, I'm looking for the provisions that respond to one of the points that was made.

Mr Hastings: While Mr Parker is waiting to ask his question, I'm wondering whether I could get some comment on your relationship with the other group that deals with AIDS in the city of Toronto or within Metro.

Mr Dow: Which one?

The Chair: AIDS Action Now, I believe.

Mr Hastings: AIDS Action Now. Do you work with them in a collaborative way?

Mr Dow: It depends on what the issue is. Because the issue is closer and their resources are such that they can deal with the issue better, different organizations talk about that among themselves. So we have talked with AIDS Action Now. We also talked with the HIV and AIDS Legal Clinic Ontario and we talked to a few disability groups before we did our presentation. So, yes.

Mr Hastings: You have a fundamental difference in philosophy and outlook in terms of advocacy compared to their presentation, which I have an impression—probably incorrect—is somewhat more legalistic, whereas

yours seems to be more humanistically oriented. I hope I'm not being unfair here.

Mr Dow: No, no. The issues the foundation tends to take on are more human rights issues, because we have more anecdotal evidence—we have 4,000 clients—whereas AIDS Action Now's participation tends to be more on the legal side because they have more lawyers involved within their organization. But there's a lot of cross between the different AIDS organizations. Louise Binder, who is the chair of Voices for Positive Women, is the co-chair of the Community Research Initiative of Toronto. She sits on our board of directors and she's also with the AIDS Action Now treatment committee.

Mr Parker: I found the sections I was looking for. In your paper you ask the question, "If an assessor is required to explain the process and acquire agreement for an assessment of capacity, why are the findings of this assessment not also required?" Well, they are. That is in subsection 78(4) of the amended Substitute Decisions Act, page 31 of Bill 19.

Mr Dow: Right. We can't afford to actually buy the bill, just to let you know.

Mr Parker: I just wanted to give you some comfort on that point. The question you asked is unfounded because the presumption underlying it is not accurate. If there is an assessment, there is a requirement that the results of the assessment be revealed to the person in question.

Mr Dow: I think what we're trying to get across with that point is that we haven't gone detail by detail, because I'm not a lawyer, but what we do is we watch what's going on here. We have seen that argument over and over, whether or not the person who's being assessed as incapable has the right to be notified of their incapacity, and at times the government side has said no, that they do not have that right. So we want to be very clear that they do have that right, especially if they have the right to decide whether or not they're going to go through that process, they do have the right to be notified that they are incapable. But that hasn't always been the response that comes from the government side so far in these hearings.

Mr Parker: We're mixed up in the terminology. You're talking about another point, and that's a matter we are taking advice on in the course of these hearings. We've been asking a great number of the deputants before us as to their views on that, and you've been very clear as to your view. That's all being taken into consideration.

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Mr Michael Brown: I appreciated your presentation. I thought it was thoughtful and powerful. I'm interested in your views on systemic advocacy. We know the Advocacy Commission's gone. Forget that; whether we like it or not, that's happened. In your view, what suggestions could you give to the government on a replacement; they say they want to replacement over there. Tell me, in your view, how we can get to that point from where we are now.

Mr Dow: When I was going through all of the documents that I had access to, it wasn't a question of whether or not shutting down the Advocacy Commission

was a good decision. I haven't determined whether or not that was a good decision, but what I have determined is that we do need some central office somewhere in Ontario where we can address issues of individual advocacy so that trends can be formulated, not just within the AIDS community but within all vulnerable communities.

We may find that things that are happening to vulnerable people living with HIV may be similar to things that are happening to people who are elderly, so we need that one central office so that we can change the system. It doesn't make sense to have us running around doing individual advocacy on the same issues if we can change it systemically. So we'd like one office.

Mr Michael Brown: Some sort of just coordinating office that would let everybody know your group's interested in this particular issue and so are these others and maybe you should get together and talk about it and approach it on a common front.

Mr Dow: Exactly.

Mr Michael Brown: That sounds like a reasonable and strong suggestion. On the level of individual advocacy, your organization and ones like yours, not just relating to AIDS but other organizations—we've had quite a number through here over the past while—I'm wondering, does your community, though, find a particularly difficult time in advocating for patients as individuals, or is it more that you have difficulty on a kind of global basis for your community?

Mr Dow: I think our organization, and the AIDS movement as a whole, has been very lucky because we are very well organized. We've been able to do individual advocacy. We sit on things. The Wellesley Hospital has a community advisory panel for HIV, so there are many groups that are represented there to make sure that the hospital is addressing concerns that we have. There are many concerns that they've been able to address. We've worked with Women's College Hospital around the sensitivity issues that people in emergency need to understand when they're treating somebody who comes into emergency who has HIV, and they've actually partially funded with us a position to do that type of training. So we've been very, very lucky there in the AIDS movement.

One of the things that we find at the foundation is that there is a lot of individual advocacy that is happening, but it's because of the years that we've spent building this up and it's because of the connections we've made over the last few years with other disability communities. I think I answered your question.

Mr Michael Brown: Yes. I was thinking that was probably the case, from my knowledge of organizations.

It seems to me that you are in a particularly good position, because of your experience, to talk to the educational value, because I think among your own community you have been able to educate people to their rights and what it is that they need to do to make themselves heard, and much of what you have developed over a period of time would be very valuable shared with other organizations completely unrelated to your particular cause.

Mr Dow: One of the programs that we did develop was a peer advocacy program where we train individuals to do advocacy for other individuals. Also, when we see

a client, we teach them how to do self-advocacy for themselves. The only time that we're the actual advocates for most of our clients is when they ask us to intervene on their behalf. We've found that that's been very successful.

One of the interesting submissions that I listened to was from I think it was the Ontario Nurses' Association, where one of the presenters said that they considered nurses to be very good advocates. That hasn't been my experience, and in talking with the clients of the foundation, that hasn't been very many people's experience. I think that the nursing care has been fine, but I believe they're in a conflict of interest to be an advocate on my behalf and I'd rather bring somebody from a community who's familiar with my disease in to do my advocacy. We're lucky in the AIDS movement that we have that.

Mr Michael Brown: Again, you're confirming my suspicions about your abilities. The government has talked about the education component and self-advocacy and training volunteer advocates, and it would seem to me that your particular experience may be far stronger than many other organizations. Have you had the ability to share your educational approach with the government to this point? Have they asked you about these issues?

Mr Dow: That's a big concern for us, that there isn't that type of consultation happening, and I'm not sure that when it does happen it's being listened to.

I don't want to beat up the government, but it would seem to me more logical that you talk to the people who are going to be devastated by some of the changes that are proposed before you ram them through, so that at least we have a voice at the beginning, because then I don't think the changes would have been written the way they were. I think advocate would still be in the legislation instead of being really watered down, I think rights advice would still be in there, all the things that we know that are really important.

We're not asking for the government to spend a whole bunch of money on something. We understand the constraints they're under, but we would like to have a voice in the changes that are going to directly affect us on a day-to-day basis.

Mr Michael Brown: We're having some difficulty. We understand what the agenda is, but we would have thought that if they were going this way, they would have something to replace it immediately.

Mr Dow: So would I.

Mr Michael Brown: It seems to me the old "throw the baby out with the bathwater" sort of thing. It's easy to criticize the present system without putting up one of your own to measure against that.

Mrs Boyd: Thank you very much for your presentation. It's good that we have some time to actually talk with some presenters a little bit.

On the issue around capacity, it is true that a health care professional who finds you incapable does not have to tell you he or she has found you incapable and does not have to provide rights advice under Bill 19. Assessors are different than health care providers and that's where the confusion came in, but I think for most people it is that immediate issue around the health care provider not

providing that information that has caused a lot of the concern within the community.

Certainly we have heard very conflicting views from health care professionals about whether or not they ought to do that. We have some physicians coming in front of us who say, "Of course that is my job, that is my ethical requirement as a physician," and others who say that they're not lawyers, that this is not their job and that no, they shouldn't have to do it. There seems to be actually some real concern that there isn't a uniform position.

The nurses you spoke about, for example, said that yes, they thought that was their ethical responsibility as a profession. The OMA didn't seem to think it was, but individual physicians who have come in front of us have said that they did think, very much, that it was, interestingly enough, many of those being psychiatrists who have been used for 10 years to working with the Mental Health Act which requires them to do that, and they are no longer objecting to that because they've learned to work with that act. So I think it's kind of interesting.

Similarly, the findings of an assessment by an assessor, when you get to that formal stage of an assessor, have to be given to you. In other words, you have to be told you've been found incapable. What you're thinking of are the reasons. Under this bill the written reasons, which were required under the previous bill, don't have to be given.

Mr Dow: For us, especially living with HIV and AIDS, dementia is a reality, but also another reality is dealing with the stress. My concern is that if I'm really stressed and really angry, I may be assessed as not being able to be competent to make decisions on my health care.

I kind of look at the list of who's going to be called up, and I called my parents in. They would be the people who would come up and make decisions, but they don't feel capable to make those decisions and that's what concerns me about this law. It puts a huge onus on me to set things up to sort of intervene there where it also makes my parents feel guilty that they're in a position where the government is expecting them to help do something they're just not capable of doing because I was in a bad mood one day in the hospital. That's what our concern is.

1620

Also with dementia, it could be fleeting. You could be a little spacey for a couple of days in the hospital, and I've done that, whether it's dementia or whether it's with drugs, but the next day I may be able to make those types of decisions on my own and this bill doesn't address those types of issues.

Mrs Boyd: I think you're wrong there.

Mr Dow: No.

Mrs Boyd: I think you are wrong there, in that there was some very careful design feeling about cyclical incapability and I think there's room in here for that. I think a lot of what the problem is is that there is a section there that was specifically asked for by some members of the psychiatric community around Ulysses contracts, where you do give up that right, you waive your right in a power of attorney to withdraw that power

of attorney under those circumstances. You would never put yourself in that position.

Mr Dow: I might not. If I was truly aware of all the laws and all the things—

Mrs Boyd: But it is a very specific thing that would have to be written in. If you're not specifically waiving your rights and your power of attorney, then that wouldn't happen and you would have to specifically waive them under the section, I think it's section 50, of the act. There are some protections there around that kind of thing.

I think your worry is, will people actually inform you as you go along of what's right, and will you be able to exercise those rights if you don't know what they are?

Mr Dow: Without the advocates and the rights advisers who can be there, but I'm not guaranteed I'm going to have access to those provisions.

Mrs Boyd: That's right and often when people are in a vulnerable state, they have a hard time thinking about how to do that sort of thing as well, don't they? If the rights advice isn't offered at the time, it isn't necessarily going to be something that you remember in those moments of stress. I think that's quite true. You said you had some questions about definitions.

Mr Dow: Just as a really quick example, one of the definitions we had difficulties with was treatments. We believe any individual has a right to consent to any treatment, but Bill 19 changes definitions of "treatment" and it now excludes certain activities. Of concern to us would be that assessment of capacity is no longer in that definition; communication of an assessment or a diagnosis; admission to a hospital or other facility; treatment that in the circumstances poses little or no risk or harm to the person; and anything prescribed by the regulations as not constituting treatment.

That was one of our really big concerns, that the definition of "treatment" doesn't really explain to us what treatments are any more, and it sort of gives powers to the medical professionals to make decisions and perform tasks that we might not want to be part of.

Mrs Boyd: And possibly, also, to withdraw things you might not want withdrawn. We've heard a lot about issues around nutrition and hydration and we know that a population that anticipates a point where they may be in an end-of-life stage might have some concerns about that. We certainly heard that from other groups, that you need to have some understanding of whether or not nutrition and hydration, for example, are a treatment. Are you entitled to be offered food, whether or not you decide to eat it, whether or not you physically wish to do that at that time?

Those are the kinds of questions that, you're right, aren't there and that have a lot of people exercised. As we go through the amendment process, we're going to try and get some clarity around some of those things. I think there's been a forgetting that some of the things that are in there for a particular group—for example, the admission to a long-term-care facility—are there for a particular group that asked for it, but may have implications for other groups that didn't ask for it and I think those are the kinds of things you need to be concerned about as well.

Mrs Johns: Section 15 of the act talks about the return to capacity you were talking about earlier and the ability one day for someone else to have to make the decision for you and another day for you to be returned to capable and be able to make the decision for yourself, so that's section 15 in the Health Care Consent Act.

Mr Dow: And without rights advisers and advocates to ensure that happens.

Mrs Johns: I wasn't here when the question was asked, but we've been listening to how rights advice would be best brought out to people, so we haven't said that won't be an amendment. We are looking at that possibility at this particular time.

Mr Dow: So we can safely say that will be an amendment?

Mrs Johns: We are looking at it, I said. Yes, we are looking at it.

Mr Dow: We'll take that as a yes.

Mrs Johns: Thank you very much. If you'd like to suggest anything, we'd be happy to hear from you. We're waiting with anticipation to see what's there from the other parties.

The Chair: I will just quickly read in a letter from the Ontario Association of Non-Profit Homes and Services for Seniors. It's directed to me. It says:

"On Monday, February 19, 1996, we appeared before your committee and presented our comments on Bill 19. At that time copies of our written submission were not available.

"It now appears that 35 copies were received at Queen's Park on Friday morning, February 16, 1996, but were not delivered to the clerk's office until today," meaning our clerk. "We would appreciate it if you would advise committee members of this fact."

They were somewhat embarrassed.

WILLIAM BUTT
DAVID MOLLOY

The Chair: Our next submission: Dr William Butt and Dr David Molloy. Welcome.

Dr William Butt: I'm Dr Butt. I just circulated a very brief outline and that's probably all we'll discuss at the moment. First, I have to commend and thank this committee for allowing us to come before you at this time. I also feel I should commend the government on Bill 19 and certain amendments it has made.

At this time, we hope to present to the committee a brief summary of conditions with respect to capacity, and second, a draft of an act for the accurate capacity assessment. This act would be based on studies that have been made on a scientific pilot program, also confirmed by research. The assessment of capacity to manage health care has been put together and we have a rather large volume which we will probably submit for you. I have it here, but it's not one that you could distribute as 30 copies.

As far as we're concerned, we're probably looking at Bill 19 with respect to health care. I'll probably combine most of my remarks or inquiries with regard to assessment of capacity with regard to health care.

A draft of assessment of capacity for personal care provides for the government a referral, if necessary, when

medically or for other reasons the person's capacity has to be reassessed. In other words, to me it's like a referral if I wanted to get a medical opinion prior to doing surgery.

There is very little else to say with regard to that except that the results from this assessment would probably be referred back to those who are looking after the care of the individual. Many of these have been dealt with, unfortunately, from my feeling, in health care in a legalistic manner and also bring out the adversarial process, which is probably not the best for the individual being looked after.

The measurement of capacity or vulnerability can be accurately and reliably done with valid instruments. These have been produced and are available. This proposal I'm suggesting would be simple and very cost-effective.

I think at this point we'd be open for questions, rather than belabour you with a lot of my ideas, but perhaps we could explain what we have to suggest for the committee. This is Dr Molloy, who will continue.

Dr David Molloy: I was on the Advocacy Commission and I suppose I have the privilege of saying I was the first person to resign. I resigned after about two months from the Advocacy Commission when I realized that the Advocacy Commission was not going to achieve what it set out to do. At the same time, I was employed by the Substitute Decisions Act, the office, to develop instruments to measure capacity for health care, personal care, property and finances, and they gave us \$620,000. We had a group of researchers from McMaster in Toronto and spent a year developing the instruments. In the middle of all this stuff, I got appointed to the Advocacy Commission and then everybody became very excited that I was in a conflict of interest because I was working for the enemy making competency instruments and here I was supposed to be an advocate and people thought that was completely incongruous. So eventually I resigned from the Advocacy Commission and the Substitute Decisions Act cut our funding for the study, so we lost everything. We actually had the instruments and had spent a year developing instruments, and we actually have instruments that measure capacity but nobody wants to listen to us or use them.

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One of my problems with this whole process that I'm watching—I'm very frustrated and I just told Trudy here that I get blood pressure when I come back to this stuff because I'm a health care professional; I'm a geriatrician. I work with the elderly every day of the week. I get asked to see people for assessment and capacity is an integral part of that assessment. I was telling Dr Butt in the car on the way up, it's kind of like being a mechanic and working on cars all the time and being told that you're not allowed to work on the brakes, that if you're going to get the brakes fixed, you have to get this guy to come from Toronto who's going to come down and examine the brakes and it's going to cost you \$1,000. So you're going to say, "Well look, forget about the brakes, we can get by a bit." This is what's happening all the time in the health care system.

This capacity is totally blown out of all proportion and now what we're doing is, we're developing legislation in offices that are air-conditioned on the 15th storey of some building in Toronto that are totally disconnected from the health care system and trying to impose the system on the health care system that's legalistic, adversarial, Byzantine, completely inappropriate and very expensive, and it just doesn't work. We spent literally hundreds of millions of dollars developing the Substitute Decisions Act and we had an Advocacy Act which was totally adversarial. We were spending \$1,000 assessing somebody with two assessors in this whole process, determining the person's incompetent and then we have an advocate coming in and telling the person, "You don't have to believe all this stuff. You can fight the whole"—and the whole thing was just a joke. To me, the whole thing was—anybody in the health care system could look at this stuff and say this wasn't going to work and it obviously didn't work.

My concern is, again, here we go revising the old blueprints and the plans and nobody has ever tested this stuff in the health care system. Can you tell me it's going to work? Can you tell me what impact it's going to have? No. We've never even bothered to pilot any of this stuff and it's all social experimentation. We actually have the researchers that the government hired to develop the instruments and the process and they went and developed them and then when we told the government, they didn't like what we had to say so they cut us off at the knees. If you look at our final report, we told them that this stuff would not work. So when you tell them it's not going to work, and this is the process you have to use, they cut you down.

Let me give you an example of what I'm talking about and make it really simple and make it practical for you.

I have an 84-year-old woman who's living at home and burning pots and pans. Her daughter is concerned about her—and I don't know about aides and stuff; I'm a geriatrician. But 90% of the problems with incapacity we have in this province are with elderly people and it's getting bigger and bigger and bigger, and here I am telling you what the problem is.

An 84-year-old woman living at home, she's burning pots and pans. Her daughter's concerned about her. Mother doesn't want to acknowledge she has a problem and she doesn't want to go and live in an institution and she says: "I'm okay. I've been living on my own for 50 years. Leave me alone. My daughter's a busybody." Now, if we have a capacity assessment process, the daughter's going to have to contact somebody in the government office and you're going to have to send out assessors. You're going to have to tell mother that this is the problem: "Your daughter squealed on you"—you have to—"Your daughter squealed on you. We're going to come and assess your capacity and if we assess you as having capacity, then you can decide to stay at home and continue to burn the pots and pans and put the whole apartment building on fire and roast everybody. Or, if we decide that you don't have capacity, then somebody else can make your decisions and put you in an institution."

The solution for the woman is not capacity. The capacity is one of the problems. The problem with the woman is, she's burning pots and pans. Switch off the

stove and get her Meals on Wheels and we have no problem.

The problem with capacity is that we're making this big deal of capacity but it's usually a symptom of an underlying problem and it's usually part of a complex mix of problems in a person's life. If we make capacity a legalistic, adversarial affair, then we're going to blow it out of all proportion, set people against each other. It should be done as part of an integrated assessment process. Sometimes the solution to capacity is not all of the stuff we do and as health care professionals out there doing that routinely, day in, day out.

What percentage of people do you think in the long-term—care system lack capacity? About 50%. What percent of people come to hospital, lose capacity, gain it again, have capacity for this, don't have capacity for that? Capacity's not an all-or-nothing affair: you can lose it; you can get it back again. For example, even within health care, you could have capacity to make certain decisions and lack it to make other decisions. And you really can't come in and say the person has capacity for health care. They could have capacity to make one decision and not to make another. With the system that we're inventing, it's going to cost you \$800 to \$1,000 to assess capacity every time we have to make any decision in the health care system.

I would suggest to you, the solution to the capacity issue is not the way you're going about it. The solution is simple instruments that we have developed that are objective, scientific, valid and reliable, that you can use routinely to assess capacity and 80% of the time they'll assess it, and if they don't work, then the other 20% you need a more complex system. But it's got to be part of an integrated assessment of older people and not a single issue the way you're doing it now. This process of developing laws and trying to impose them top-down the health care system—I'm afraid it won't work. Thank you.

The Chair: It's actually Mrs Boyd, but rather than use your time, Mrs Boyd, and with your permission, I would ask you to describe in general the instruments.

Mrs Boyd: I think we saw them this morning. I think the gentleman from the cerebral palsy foundation brought in your instrument, Ace.

Dr Molloy: No, Ace is not an instrument.

Mrs Boyd: Oh, I thought you were the person that he had collaborated with.

Dr Molloy: No.

Mrs Boyd: Oh, okay. Must be another Dr Molloy who's into this whole field then.

Dr Molloy: We don't call our instruments Ace. I've never heard of Ace before.

Mrs Boyd: Oh, okay. We'll look at our stuff and we'll show you what it is.

Dr Molloy: Our instruments basically are very simple. Capacity's got three components. It has context; you have to understand the person's context. The person has to know their decisions and appreciate the consequences of their decisions. To assess capacity, you have to actually construct the decision. You have to have a model of capacity. For example—give me an example of a capacity assessment you want to do.

Mr Doyle: Okay, I have one.

Dr Molloy: What is the capacity assessment?

Mr Doyle: I'm sorry. I misunderstood what you were going to say.

Dr Molloy: Give me an example of a decision you want.

Mr Doyle: Well, for example, I drank too much coffee last night and I got one hour's sleep and I'm having a bad day.

Dr Molloy: Good. Me too.

Mr Doyle: I'm having a bad day. How would you judge that?

Dr Molloy: What's your decision? There has to be a decision to assess capacity. You have to have a decision. Capacity can only be involved in a decision.

Mr Doyle: Okay.

Dr Molloy: You want to buy a pair of socks. You want to buy a car. You want to make a health care decision. You want to choose where to live, go on holiday. What's the decision and I'll tell you how to assess capacity.

Mr Doyle: Well, okay. I want to buy a pair of socks.

Dr Molloy: Okay. You want to buy a pair of socks. It's a fairly trivial decision and we probably wouldn't want to assess your capacity to do it because it's not going to have serious consequences for you, but say you're going to buy something.

Mr Doyle: Okay.

Dr Molloy: Well, what are you going to do? You're going to buy something. Let me do a decent decision because the pair of socks is fairly trivial. Give me a decent decision: health care, personal care or something. Let's not trivialize it that much.

Mr Doyle: Okay, we won't trivialize it but I think it's perhaps important to show that it is trivial, isn't it?

Dr Molloy: Well, no, it shouldn't be trivial. You shouldn't be assessing people's—capacity is a very important thing because if you lose capacity, you lose freedom, and millions and millions of people have died for freedom. The last thing society wants to be doing is arbitrarily taking away your capacity. Just because you seem to lack capacity, we shouldn't be assessing you. There should be a serious reason for assessing capacity. It's not a trivial thing.

Under the present system, there are no criteria for actually proceeding. If somebody asked for it, you get it, and it shouldn't be that simple. There should actually be risk to life or to property. It shouldn't just be, you know, like Jean Chrétien, somebody—

The Chair: Excuse me. Do you have one? We haven't said that. The question was mine. You need an example. My senior partner at my old law firm at the age of 77 had to make a decision regarding varicose veins, which was giving him some discomfort. He was in excellent health.

Dr Molloy: Okay. So—

Dr Butt: Let me answer this. I've been in practice for a good number of years: in emergencies for a good 20 years, looked after hundreds of facial, auto accidents, reconstruction, and so on. So you're asking me about a person with regard to varicose veins, have I heard you correctly?

The Chair: Yes, at the age of 77, that gives him some small discomfort.

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Dr Butt: Okay, and whether to look after it or not. Now, am I to ask or am I to interpret the capacity of the individual to ask me as a surgeon to look after them? Is this the position? I've done this thousands of times.

Dr Molloy: Can I just talk about the—

Dr Butt: Let me finish on this.

The Chair: Yes, whether he should proceed and whether he has the capacity to—

Dr Butt: The point being that the health care system of which I've been part—very definitely, I would say okay, I'd explain it to the patient. I would tell him what had become, now it's called informed consent, and if they do not appreciate what I'm saying, then the next person is the person who may or may not be with them, and at that level, if nobody understands and I see a serious risk, I have to make some sort of decision personally. Now, to bring in somebody that, for whatever reason—if this is going to complicate the person's life or the way he can live, then I may have to have somebody to assess them on a specific thing. But personally, this has all been done for years by competent people in the field.

Dr Molloy: Can I tell you how we propose to do it?

Dr Butt: Just a minute.

The Chair: Excuse me, Doctor, we'd better start the rotation. Mr Brown is actually leading us off and we have about five minutes each.

Mr Michael Brown: What you present to us is a very interesting concept that's new to me, at least the empirical part of it, where you—

Dr Molloy: Can I just briefly describe how you would do that?

Mr Michael Brown: That's what I was going to ask.

Dr Molloy: You would construct a decision. The decision here is to have varicose veins done or not. It's not a life-threatening procedure. You would have to describe to the person the potential benefits of having the procedure. So, for example, one choice is to have it done, the other choice is not to have it done. The benefits of having it done are, you will not have the discomfort any more, you will not have the swelling in your leg, and you will not have the pain. The downside is that you can have serious problems from this, it can go wrong, you can have infections, and you list all the serious problems.

You actually construct the decision on a piece of paper and you say: "Here's the decision. The choice is to have it done or not to have it done. We have beneficial, good consequences and bad consequences." You write them all down for the person, you give them to the person and you come back to the person and say, "Okay, what do you want to do?" "I want to have them done." "Why?" "Well, because I want the good things that are here." "And what about the bad things?" "Well, I know I could have the bad things, but I'm prepared to take that risk." Fine, and there's the decision.

If you start doing capacity assessments, you have an obligation to educate the person and you have to construct the decision and you have to actually write down the good things and the bad things, and that's truly informed consent. You can construct that for any single decision and that was the model we developed and it worked. It was very simple. So basically, you construct

a model. The person says, "Which is more important to you, safety or quality of life?" And the person says, in this case: "Quality of life. I'll take the chance on the safety and I want to improve my quality of life. Therefore, I choose to have the veins done and therefore I accept the consequences." That's it.

For the woman living at home, the context again is safety or freedom—safety of living in an institution or freedom of staying at home. Her choices are to stay at home, but she's at risk, or to go to an institution where she's potentially safer. You list those out and she says, in this case: "I choose safety. I go to the institution. I give up my freedom," or whatever. You construct the decision and it's a very simple model and it works extremely well. It's very simple. That's why all this fuss about capacity and this \$800 and \$1,000 assessment is completely inappropriate, I think. It couldn't be simpler, really.

Mr Michael Brown: If I'm understanding, though, the capacity assessment in the case that we've just presented is based on the person making a rational choice.

Dr Molloy: No. Capacity assessment's got nothing to do with the choice you make.

Mr Michael Brown: It's understanding the process—

Dr Molloy: You don't call a person as having incapacity because they make a decision you disagree with. That's a bad decision. For example, say I decide I want to drive down Queen Street here at 200 kilometres an hour. I can kill pedestrians. Now you say: "That guy's got to be crazy. He can't have capacity." You say, "Why do you want drive?" "Because I like the fun. I really like having fun. I think it's very exciting. I want to drive down Queen Street." "Well, what about all the people you're going to kill?" "Personally, I don't give a damn. I accept, I understand I could kill people, but I don't care." Do I lack capacity? No, I don't. I don't lack capacity; I'm just making a bad decision.

You can't use capacity as a way of enforcing or stopping people from making bad decisions in society. You say: "That person has capacity. We're not going to put him in prison because he lacks capacity. He has capacity but he's making a terrible decision. We have to deal with the bad decision." What people are afraid of is that we're using capacity, only we have a double standard in the health care system. If you're lying in bed and you agree with everything that's happening, then everything is okay. It's only when you start refusing treatment that people start questioning your capacity. So we're using capacity in the health care system to make people do what we think they should do, and that's the wrong thing. That's the problem.

Mr Michael Brown: I'm having some problem understanding exactly what it is in that it isn't the decision we're questioning. It's whether the person understands both sides of the question.

Dr Molloy: The consequences, absolutely.

Mr Michael Brown: And how do you determine whether they've actually understood both sides of the question.

Dr Molloy: They answer you. You ask and they answer you. You have to construct different models for different people who have communication problems.

Mr Michael Brown: Then, if the answer is not appropriate to the information they had, you could say the capacity for that decision isn't there.

Dr Molloy: For example, if I'm inconsistent and I say I prefer my freedom or I prefer safety, I couldn't risk anything bad happening to me but go ahead and do my veins, that would be inconsistent. Or if I said to you one minute I want the veins done and the next minute I don't want the veins done, I'd be inconsistent. Or if I said to you, "Oh, no, I believe that nothing is going to happen to me when I have that surgery; everybody else gets side-effects but not me, it could never happen to me," then I have denial; I don't accept the consequences.

Mr Michael Brown: All right. That was the question.

Dr Molloy: But if I'm consistent and I can answer the questions appropriately and I accept the consequences, I have capacity. That does not mean that I cannot choose to make a very bad decision. That's a different issue.

Mr Michael Brown: I understand that. What you are interpreting, then, is that the person understood what the choices are.

Dr Molloy: They know their choices and appreciate the consequences. That was your own law. You operationalized that. It's very simple, and you put it into the system and nobody wanted to hear about it. You can ask me why I think that.

Mrs Boyd: Dr Molloy, my understanding of what you were doing was to develop the procedures for the Consent and Capacity Board, am I right? Of those, we had a very small number of applications from people who weren't psychiatric. In the six months—well, April to December—341 were looking at capacity, so when you say everybody having \$800 to \$1,000 for a capacity assessment, that is not the intention of this bill and never was the intention of the current bill that's in force now.

Capacity on a normal basis would be handled by the health care provider, based on exactly the kinds of comments that you've used, whether the person can appreciate the consequences of not having the treatment, of having the treatment and so on. That was the anticipation for the vast majority. It's only when the person refuses and applies to the Consent and Capacity Board that the other kind of situation would kick in.

I understand your frustration, but it really isn't hundreds and hundreds of people we're talking about. We're talking about only those who apply to the board for a capacity assessment either because the persons themselves don't recognize that they're incapable or because there's some other problem that's happened with that assessment. We had 341, during that period from April to December, who would have fitted into the category that you're most concerned about. I think most of those would have been gerontology patients as well. I suspect you're right on that.

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Dr Molloy: How are you going to assess capacity in the health care system at present? How is it being done?

Mrs Boyd: I agree with you there should be a simplified method. I'll show this to you because it's very much what you're talking about as a kind of a simplified guide that we got from one of our presenters. It sounds very much as though it goes along the lines of what

you're talking about, in fact telling those people how to make that assessment, how to score themselves as to whether they're sure or unsure.

It still leaves that broad middle category of somebody being probably capable or probably incapable. That's the group of people you might want to have apply to the Consent and Capacity Board. But I really understand your frustration around this and I agree with you—it was always anticipated—that in the first instance it would be a relatively simplified kind of procedure.

Dr Molloy: Our problem was that we actually developed it. The government asked us, we spent a year developing them and all of a sudden they just cut us off. One day they just wrote to us and said, "Stop." The reason we were told was because the process we were developing did not fit with the process they were developing and that there was some other group that was developing this process. It was very confusing, because actually we were informing the government as we went along. We were having regular meetings with them and telling them all the way along what was going on and then one day, honest to God, out of the blue we got a letter saying, "Stop." It was incredible. Nobody wanted to hear what we had to say after that.

Mrs Boyd: Let me just tell you that as one of the ministers—I assume this was while we were still in power, was it? Or was it since?

Mr Molloy: You were kind of winding down at the time.

Mrs Boyd: We were winding down. This explains it. It's amazing what happens when an election has been called and there is a power vacuum. I really want you to know that when I was still there—

Dr Molloy: I don't think it was done at a political level, actually.

Mrs Boyd: No, I don't think it was either. Our understanding was that that process was going along and that those instruments would be available to the capacity board.

Dr Molloy: I'm not going to comment on how it went. I'm just telling you what happened from my perspective. I'm not here to throw stones at anybody.

Mrs Boyd: Our impression was that the expertise was being used properly as well, just so you know that, because I think we're all sitting here going, "Whoa, this doesn't sound like a good thing that happened."

Dr Molloy: The only thing you can do to people after that is to have character assassination, right?

Dr Butt: May I answer quite differently from Dr Molloy? I'm just a plastic surgeon looking after reconstruction and burns and all these sort of things. There's many a time when I get into the situation where, if you take a third-degree burn over 30%, the patient is in this unfortunate position of not knowing what's going to happen, maybe thinking he's going to live; I may think in my mind that he probably will die no matter what I do.

However, with that legislation, which was in as of April 3, 1995, we were put in a position—I was and so were many of the other doctors—of finding an impossible thing, besides bringing in somebody who reads them their rights. It makes no sense, because then I stop looking after him, the other fellow stops looking after him, and

say, "When this fellow comes in to read him his rights and he doesn't understand, what am I doing?"

I'm not saying that the people who were doing this over many years made as much as possible an educated decision. We certainly brought in informed consent, we brought in all of the other reasons of making everybody know, but when it was legislated that we should stop and bring in these people it was impossible to carry out, and that is probably my strongest concern in this particular field. I don't want to argue on the power of attorney and the advocacy and who does which and what. Some of it I agree with, some I don't, but that's irrelevant to what I actually know, and I've been there. That was my concern.

I also read the act from beginning to end and realized that there was a \$5,000 fine against me if I didn't call in these rights advisers. Anybody who's in emergency for a certain length of time, and it's usually the younger doctors, and a \$5,000 fine—he says: "Well, that's fine. We'll leave it and call." A few people did die, as you know.

Mrs Johns: I just want to make a comment and I'm going to pass to my colleague. In the Health Care Consent Act, under section 3, a person is deemed to be capable if they understand the information that's being told to them and if they reasonably can foresee the consequences of the action. That's basically what you're describing when you're describing your decision tree with the different alternatives, the yeses and the nos: "This is the action. Do you understand it and do you see the consequences?" In effect, I believe we have taken into consideration what you have said. I think you outline it maybe a little better with the decision tree analysis, but I believe that's the process we are now going to go through under health care.

Dr Molloy: The problem is that you say those words, but how do you actually operationalize that? How do you make a determination that this person knows his choices and appreciates the consequences? Does "Uh-huh" do? Is "uh-huh" okay? Do you say, "Do you know what's going to happen?" "Uh-huh, I do." Is that enough? How do you actually operationalize that? That's the problem we have. We are implementing from the top down. We had the legislation, the Substitute Decisions Act—same thing; you know your choices and appreciate the consequences.

What does that actually mean in the emergency department? When I make a decision about operating on somebody, what does the person have to say to me? That's what the health care professionals don't have and that's what government after government has repeatedly failed to do to the health care professional. Health care professionals are terrified of this whole area because they can't interpret the laws. It's easy to sit here, you and me, and say, "Well, this is what they have to do," but I'm in the emergency department. What does that person have to say to me before I can do it? That's the problem.

Mrs Johns: For example, after I've just broken my leg I have to understand what you're telling me. I have to understand that I have a broken leg and then I have to understand the consequences of that. I think that's fairly straightforward in knowing whether I'm capable to make that decision or not. I don't understand why this is some involved process that we're going to go through. I

imagine predetermined decision tree charts or something like that. Is that what you're suggesting?

Dr Molloy: No. The problem is that competency is not being interpreted like that. Some psychiatrists in this province will ask the person: "What day is it? What week is it?" If the person doesn't know, they're incompetent. There's all kinds of stuff being done and competency is being misinterpreted. The average health care professional in the field doesn't understand competency. If they don't understand it as simply as that, they don't know how to ask the questions and they don't know how to interpret the responses. For you it's very easy. For a deaf 85-year-old person for whom English is not the first language and who is defensive and has short-term memory loss it's not so easy. Interpreting their capacity is different. It's difficult. We need simple guides for health care professionals and not complex legislation, and that's what we've been giving people.

Health care professions are terrified by this, they're completely confused by this and we've been giving them the wrong information. We spent literally hundreds of thousands of hours teaching about the Substitute Decisions Act and the Advocacy Act and when to call them and guidelines. Health care professions are extremely confused by all of this. We have not put this into the system. You need to put it in the system and test it—it's easy to do that—work through the glitches and find out where the problems are. I don't believe we should be doing province-wide experimentation on the health care system, and that's what we're doing. You can actually pilot this in the health care system and see if it works and develop simple aids and simple guidelines and videos for health care professionals. We're not doing that.

Mrs Johns: I guess I don't understand what aid we need to ascertain if a person understands it and if he sees the consequence.

Dr Molloy: Most health care professionals don't even understand that much.

Mrs Johns: I think you're underestimating the health care professionals.

Dr Molloy: I work in the health care system.

Dr Butt: I've worked my whole life in exactly those situations. I don't know whether I've described it accurately for you, but if you've lived as I have when I was in Detroit—we had them shocked and we had this and that. It wasn't nice, quiet Toronto, although Toronto is moving that way. There was no question that we had to make decisions, and the capacity of the person was often very, very fuzzy. With these laws coming down, heavens, I would just have to walk away from them and call in one of these rights advisers. That was the greatest fear and it was a real, genuine fear of everybody who worked in emergency.

Dr Molloy: If it's that simple, why does it cost 800 bucks? Why does it cost them between \$800 and \$1,000 if it's that simple?

Mr Parker: Dr Molloy, if this issue is to be pursued, would you prefer to see further detail in the legislation on the matter or would you rather have the colleges work out the details and give directives to the profession?

Dr Molloy: I'd prefer to see simple little packages going to health care professionals, simple little aids in

how to measure capacity instead of complex interpretation of difficult laws. Give them simple little aids: "This is how you measure capacity. Here's a sample interview. This is how you implement this law." That's what they need.

Mr Parker: Would this be an appropriate matter for the professional college to work out as a profession?

Dr Molloy: Probably.

1700

Dr Butt: May I answer that? I've been treasurer of the OMA, about 10 years at one point, and also the college. Again, the college can look after the people and represent them, first. Secondly, the doctors can listen to their cases.

The college has to do with laws, and I think we're talking about something that is not in the field of the legal people, whether it's laws or whether it's our own laws, our governing laws with regard to care. This is an entirely different situation, which is not an illegal situation; it's something that has been created. If it gets into the legal part of it, we're into big trouble.

Dr Molloy: Yes, you don't want this to become legal.

The Chair: Thank you for your practical approach to the problems we're deliberating and all that good stuff.

ONTARIO DENTAL ASSOCIATION

The Chair: Our next submission is the Ontario Dental Association. Welcome.

Dr Roger Howard: Good afternoon, Mr Chairman. Thank you for this opportunity to meet with the committee about Bill 19. I'm Roger Howard. I'm a general dentist from Ottawa. I'm also president of the Ontario Dental Association. With me today is Linda Samek, our director of professional affairs.

The Ontario Dental Association is the voluntary professional organization which represents the dentists of Ontario, supports them in the provision of exemplary oral health services and promotes the attainment of optimal health for the people of Ontario. The vast majority of our members provide essential health care services in private office settings in communities throughout Ontario.

Today, our comments will focus on the proposed Health Care Consent Act. In general, we're pleased with the direction of the legislation. We're here to support the initiatives and offer some advice on one or two aspects of the proposal.

Because dentistry is community-based, it's necessary to implement a consent process that is not only clear for providers and patients but also usable in all practice locations.

We wish to state at the outset that the proposed Health Care Consent Act addresses many of the problems associated with the existing complex legislation known as the Consent to Treatment Act. The existing consent to treatment legislation imposes unreasonable restrictions on the delivery of health care. The rights advice process is quite simply not workable in the community practice setting.

Let's be perfectly clear. Under the existing Consent to Treatment Act, the rights adviser only explains that there's been a finding of incapacity and informs the patient of the right to challenge the decision. The rights

adviser is not able to provide or refuse consent to treatment on behalf of the patient, and therefore the introduction of this intermediary simply delays the consent process and, in our view, creates a disturbing myth that the patient should not trust their regulated health care provider.

Fortunately, the Health Care Consent Act aims to restore faith in professionals, and we certainly applaud the government for its efforts to restore the balance of trust in the patient-practitioner relationship.

The concept and process of providing informed consent is not new. Traditionally, patients and health care providers have entered into agreements about patient treatment plans based on informed consent. While the existing Consent to Treatment Act attempts to build upon this customary practice that's well established in common law, it is simply too complex. In fact, the process is so complicated that our vulnerable patients may not be able to receive needed treatment in a timely fashion.

The ODA has provided brief overviews to our members on the existing Consent to Treatment Act to enhance an understanding of the requirements under that act. But the fact is, brief overviews may not provide sufficient information to ensure that practice always reflects the letter of the law. Our alternative was to create documentation like that developed by the College of Physicians and Surgeons or the Ontario Hospital Association. Yet providing a two-inch binder of facts like the information binder created by the Ontario Hospital Association on how to apply the legislation suggests that the law is far too complex for providers to implement on a daily basis.

As health care providers, Ontario dentists care for vulnerable adults and minor children on a daily basis. The primary concern of our members is their ability to meet the oral health needs of all their patients in a fair and timely manner. This includes ensuring that a responsible, informed consent process is followed.

Our members support the principles of informed consent. We also recognize the instrumental role of the government in the coordination and administration of Ontario's health care delivery system. Because it is important for government legislative policies and stated philosophies to be complementary, we believe there is a need to change the existing Consent to Treatment Act. Ontario dentists are pleased to see a move in this direction, and we are sure that by working with all interested groups, we'll be able to bring in new legislation that protects patients in all practice settings. We trust that our following comments will be helpful in your review of Bill 19, the Health Care Consent Act. Our goal is to enhance the consent framework outlined in the current legislation.

Purpose: The ODA supports the stated purpose of the act. We agree that there is a need for the dual goals of facilitating treatment while enhancing autonomy. We also agree that informed consent should lead to the promotion of communication and understanding between health practitioners and patients. Unlike the existing consent to treatment legislation, this bill is expected to ensure a significant role for supportive families and to permit the intervention of the public guardian and trustee only as a last resort in the decision-making on behalf of people regarding their health treatment.

Treatment: We are pleased to see a fairly simply stated list of services that are not included in the treatment definition. However, we would ask for clarification of clause (g) of the exclusion listing under the definition, "a treatment that in the circumstances poses little or no risk of harm to the person."

As this legislation applies primarily to regulated health professions under the Regulated Health Professions Act, we are concerned about the use of the phrase "little or no risk of harm." When deciding to control activities rather than scopes of practice, there was a listing of 13 duties outlined in the RHPA as potentially hazardous acts. In one of the consumer guides published by the Ministry of Health on the new law, it was noted that "the new law will build a fence around only those health services that can cause harm." It goes on to note that "by not controlling all other low-risk services and activities, the new laws will give you more choice."

Does the complementary language in Bill 19 suggest that non-controlled procedures are not considered to be a form of treatment for the purposes of the Health Care Consent Act? If this is not the case, there needs to be clarification within the legislation to ensure internal consistencies for legislative language for health care delivery.

Presumption of capacity: We agree that a provider should be able to presume capacity with respect to treatment unless there are reasonable grounds to believe that the person is incapable with respect to the treatment, admission or personal assistance plan. We believe that our members and other providers will be able to rely on this reasonable-grounds test in their practice settings on a daily basis.

Elements of consent: The ODA supports the four elements of consent outlined in section 10. In our view, the elements are simple and clear. Section 10 provides dentists and other providers a reasonable framework to follow to ensure informed decision-making. Similarly, we see the inclusion of consent to variations or adjustments in the treatment and/or for the continuation of the same treatment in a different setting, as set out in section 11, as a necessary support to section 10.

Capacity: We agree that capacity should depend on treatment. While there are similar requirements in the existing Consent to Treatment Act, we find the current bill respects the patient-practitioner relationship. The existing Consent to Treatment Act requires practitioners to confront patients where they have been found incapable with respect to the proposed treatment. As we read Bill 19, we believe that this confrontational process, together with the delaying mechanism of calling in a rights adviser, have been eliminated. The rights of vulnerable patients are protected, as treatment cannot begin without informed consent. Yet the patient and practitioner have not been forced into the confrontational and personally embarrassing position for the patient of having a notice read describing the right to challenge the finding and receiving the completed and signed notice. Now practitioners can deal with patients in a professional manner that suits the individual needs of the patient and, where required, still turn to an appropriate substitute decision-maker.

1710

We see no need to embed the rights advice process within this legislation. In fact, legislating rights advice would leave us in the same position in which we find ourselves under the existing Consent to Treatment Act, which is complex and virtually unworkable in the private practice setting. Our members are professional health care providers who work within a self-governance framework, a framework that requires the governing college to serve and protect the public interest.

Bill 19 recognizes and depends on the ability of the dentist and other providers to consider the best interests of the patient. Under section 25, there is a provision for treatment to be provided despite refusal. This legislation relies on the ability of colleges to govern professionals in the best interests of the public. In section 25, Bill 19 provides a clear statement regarding the expectation that practitioners can and will work in the best interests of patients under the most serious of circumstances.

Emergencies: We are sure that our members and other providers have individual concerns about an appeal process that delays the delivery of needed care. Despite such concerns, we support a system that embeds the protection of due process for patients and practitioners alike. We believe that the emergency treatment provisions that accompany the appeal process provide a needed balance. Indeed, the opportunity to have an order to authorize treatment pending an appeal is in the best interests of the patient's safety and overall wellbeing.

Substitute decision-maker: In general, the ODA supports the hierarchy listing of people who may give or refuse consent to treatment on behalf of an incapable person. Subsection 18(4) is an important addition. The ability to rely on those present or who have otherwise been contacted will in most instances build on the family relationship.

Principles for consent: We believe that Bill 19 takes a commonsense approach to the principles of consent; that is, consent should be in keeping with a person's wishes and/or the best interests of the incapable person. Further, we like the clear statement that the substitute decider is entitled to receive all the information required for an informed consent.

Applications to the board: We are particularly pleased to see some limitations on repeat applications to the board with respect to the same or similar treatment within six months, without the knowledge that there's been a material change in the circumstances, which might justify a reconsideration of the person's capacity.

We also see the application for direction to a substitute decision-maker as an important balancing option to consider the specific needs of the patient. In effect, this permits the substitute decider to share the decision-making burden.

Consent and Capacity Board: The ODA supports the term of appointment to the Consent and Capacity Board being established at three years or less, as determined by the Lieutenant Governor in Council. Similarly, we support an opportunity for reappointments. However, we do not believe that the reappointment process should be open-ended and suggest that a limitation of, for instance, a maximum of three terms be established.

Nothing in the Health Care Consent Act provides the substitute decision-maker the authority to make financial decisions on behalf of the incapable person. It's important to note that not all essential health care services are OHIP-insured. For dentists, a very limited number of in-hospital dental procedures are considered to be OHIP-covered services. Thus, as the cost of care may be considered in the decision-making process, it's important for the dentist and other providers to understand who has the authority to make payment decisions for the proposed treatment on behalf of the incapable person. Payment authorization also relates to the provision of treatment to the capable child who consents to treatment but has no authority to enter into a contractual payment agreement because of age. We continue to ask for positive supports to be embedded in the legislation related to the authorization of payment for treatment where consent has been granted under this legislative framework.

In summary, the ODA is supportive of the general direction of Bill 19. We think it goes a long way towards the introduction of legislation designed to protect vulnerable members of society without alienating family. The legislation builds on the presumption of capacity and eliminates the need for a rights adviser. For the most part, the proposals are practical and workable for dentists and other providers in private community practice and other settings throughout the province.

We have identified one or two specific areas of concerns that require additional clarification.

Under the definition of treatment, clause (g) contains the phrase "little or no risk of harm." Because the RHPA uses this language, we wish to ensure a common application of the phrase. If the intent is to refer to controlled acts or to exclude public domain activities, we ask that this be spelled out clearly for everyone who must rely on the application of this legislation. If a different meaning is intended, that also must be clarified.

We also suggest that the number of terms of service on the Consent and Capacity Board be limited to three, or a maximum of nine years.

Finally, we raise the question about the authority of the substitute decision-maker to make related payment decisions; and in the case of children, including teens, we question the relationship of having the capacity to make treatment decisions without the corresponding authority to enter into payment agreements. We believe that this aspect of the legislation needs to be examined to ensure complementary treatment and financial decisions can be achieved.

Once again, we thank you for this opportunity to comment on the bill. We would be glad to answer any questions.

Mr Marchese: Thank you, Mr Bevilacqua, for your presentation. I have a few comments and perhaps some brief questions. You're suggesting that there be a maximum of nine years on the Consent and Capacity Board. Did you give a rationale for that in the paper, or did I miss it?

Dr Howard: Not in the paper, no.

Mr Marchese: What are your views around that? I don't disagree, but I'd like to hear from you why you think nine years is sufficient for the board members.

Ms Linda Samek: We just want to ensure that there's an opportunity for change. In any board I think there's a reason to make sure that we have continual renewal of a number of board members.

Mr Marchese: I don't disagree with that at all. I think nine years would be a rather lengthy experience and that once people go beyond that there is—

Ms Samek: It becomes a career.

Mr Marchese: I think you're right. I agree with you. I apologize for calling you Mr Bevilacqua. I didn't understand why you were smiling. Now I realize. You're Mr Howard. Sorry about that.

Ms Samek: In fact it's Dr Howard.

Mr Marchese: Dr Howard. Just some comments with respect to your being happy about some of the changes this government has made with the elimination of rights advisers. We're not happy with that. We think it's a serious problem. We think the majority of consumers who have come before this committee are not happy with that, and many of the groups that work with consumers are also not happy with that at all. So we see different types of people who are interested in the field having different opinions. I'm one who says we need to listen to the consumers who go through these experiences making sure that we give protections to those who otherwise would be—not "otherwise," but who are very vulnerable.

How do we give those protections? For me, it's a balancing of your interests with theirs. The government says, "We've done that through the bill." Consumers have come here and said: "You haven't done that. You've taken those rights away. For 20 years we've been lobbying for that and now you've taken away that particular right that we believe is needed."

Do you actually believe that eliminating the Advocacy Act and the commission and the rights advisers is a proper balance for those who don't have families, who have been abused, who are abused in a variety of different settings? That this bill takes care of all the worries that people have been talking about for years and still talk about?

Dr Howard: I think you have to recognize that the essence of a health professional is looking out for the interests of the patient. That's our first requirement. In seeking to treat people, we have a very strong commitment to the essence of proper consent for treatment.

You have to remember that the rights adviser process in no way helps that incapable person come to a decision about the treatment that they're being asked to deal with. It doesn't give them any more information; it doesn't give them any advice on how to deal with the particular problem they're facing at that time. The goal of treating people is to provide appropriate treatment, and that's something we do one on one with our patients or with their families. Certainly there are some very rare situations where people don't have any other supports and often they'll turn to friends who can give them some help. But the goal of a health professional is to meet the patient's needs, not my needs.

1720

The Chair: Thank you. Mr Marchese, is that the answer you're looking for?

Mr Marchese: That's the answer you were looking for.

The Chair: I wasn't looking for any answer.

Mr Ron Johnson (Brantford): I want to thank both of you for your presentation. Despite what my colleague Mr Marchese wants to say, there are a number of people who have come forward and supported the government in the initiatives that we've outlined within Bill 19 and in particular about rights advisers. I think that you make a very good point when you say that practitioners are really bound to look after the best interests of the patient.

The problem with the previous legislation was that it was very adversarial, very confrontational. It didn't recognize that practitioners are in fact charged with that responsibility and take it very seriously, that the best interests of the patient are certainly first and foremost. I think this legislation, as proposed anyway, at least recognizes that much.

There are a lot of very, very good points that you brought forward and we'll certainly be looking very closely at in terms of potential amendments. I don't know whether you have anything you want to add, Mrs Johns. Go ahead.

Mrs Johns: I want to talk about your comment on treatment and clause (g). When you look at the regulations that were outlined in the previous CTA, they went a long way to try and explain treatment or what a treatment was not. In effect, a lot of people said that it was too onerous, it took them too much time. We were concerned, when we were developing the definition of treatment, that we allowed some opportunity for health practitioners to actually look at the process and to see whether it was low risk, because for some people it's low risk and for some people it could be high risk depending on what state they're in and what condition they're in. Can you tell me what your problem is with the treatment issue? Can you go through (g) and tell us, given what I have just said about that, what you would like to see different about it?

Ms Samek: Basically we're very concerned that people will confuse the Regulated Health Professions Act that says specifically that controlled acts are high-risk activities and everything else is public domain, and the phrase that's used here is "low risk". We heard, for instance, Linda Bohnen in one of the presentations to the committee talk about pelvic examination, which is in fact an invasive procedure and would be considered to be a controlled activity under the Regulated Health Professions Act, and referring to it as a low-risk activity.

To me, that will leave a lot of confusion in people's minds about when something is low risk or when it is not. We think that the language needs to be very clear. If it wants to refer to controlled acts, that's fine. If it means something other than controlled acts, though, we think it should be spelled out much more clearly because that's the connotation of the RHPA, that's what people have been using and relying on. Anything that's potentially a risk or invasive is going to be a controlled procedure, and that language should be fairly consistent in its use.

The Chair: Thank you, Mrs Johns. You have the pleasure, Mr Brown, of ending our day with your last question.

Mr Michael Brown: You'd be pleased to know I had the opportunity Saturday night to precede Elvis.

My question relates to your comments about clause (g) too. I have a strong sense that this is an important element that you're bringing forward today, having been around when the health professions acts were finally passed and proclaimed. It seems to me that we have a duty in government to make sure that legislation is consistent and provides the public—not just the public but providers also—with a certainty and a constant set of rules that we all need to know and that there isn't confusion between legislation. I'm concerned, if I understand what you're saying here, that we may be changing the rules dramatically without knowing that. Would you like to elaborate?

Ms Samek: I guess what we want to know is if someone is in fact trying to change the rules. Is low risk supposed to be a public domain duty or is it supposed to be an invasive duty that doesn't carry an inherent large risk with it but still has some risk and that is why it's being controlled? We want to make sure that the public understands that when they go to health care providers and receive certain kinds of treatment it is considered in a consistent manner.

We're not suggesting that it should be the 13 controlled activities, although that makes it easier. We're just saying that suggests to us, that language suggests to us and to our members, and I expect all other health care providers under the RHPA, that they're talking about controlled activities and so I think it will be applied that way. If it's not expected to be applied that way, let us know that so that we can in fact ensure our members have a good understanding of the legislation. We don't want to get into something that's more complex than necessary.

Mr Michael Brown: I appreciate that and I don't know the answer either. We'll have to get some clarifications from the government as we go through clause-by-clause about whether they're talking about controlled acts or not.

Ms Samek: We're just flagging that as an inconsistency is all.

The Chair: Thank you, Dr Howard and Ms Samek, for your presentation. It's appreciated. I'd like to thank the members of the committee for their patience and good humour on this very long day. We are adjourning until 9 o'clock tomorrow morning in this room.

The committee adjourned at 1727.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Vice-Chair / Vice-Président: Johnson, Ron (Brantford PC)

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*Ramsay, David (Timiskaming L)

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Brown, Michael A. (Algoma-Manitoulin L) for Mr Chiarelli

Caplan, Elinor (Orillia L) for Mr Conway

Hastings, John (Etobicoke-Rexdale PC) for Mr Guzzo

Johns, Helen (Huron PC) for Mr Hudak

Kells, Morley (Etobicoke-Lakeshore PC) for Mr Tilson

Marchese, Rosario (Fort York ND) for Mr Hampton

Also taking part / Autres participants et participantes:

Ministry of the Attorney General

Chetner, Saara, counsel, treatment decisions unit

Clerk / Greffière: Bryce, Donna

Staff / Personnel: Swift, Susan, research officer, Legislative Research Service

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Journal des débats (Hansard)

Jeudi 22 février 1996



Standing committee on administration of justice

Advocacy, Consent
and Substitute Decisions
Statute Law Amendment Act, 1995

Comité permanent de l'administration de la justice

Loi de 1995 modifiant des lois
en ce qui concerne l'intervention,
le consentement et la prise
de décisions au nom d'autrui

Chair: Gerry Martiniuk
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Thursday 22 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Jeudi 22 février 1996

The committee met at 0902 in committee room 1.

ADVOCACY, CONSENT
AND SUBSTITUTE DECISIONS
STATUTE LAW AMENDMENT ACT, 1995
LOI DE 1995 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'INTERVENTION,
LE CONSENTEMENT ET LA PRISE
DE DÉCISIONS AU NOM D'AUTRUI

Consideration of Bill 19, An Act to repeal the Advocacy Act, 1992, revise the Consent to Treatment Act, 1992, amend the Substitute Decisions Act, 1992 and amend other Acts in respect of related matters / Projet de loi 19, Loi abrogeant la Loi de 1992 sur l'intervention, révisant la Loi de 1992 sur le consentement au traitement, modifiant la Loi de 1992 sur la prise de décisions au nom d'autrui et modifiant d'autres lois en ce qui concerne des questions connexes.

HILARY LAIDLAW

The Chair (Mr Gerry Martiniuk): If I may call the standing committee on administration of justice to order, our first submission is by Hilary Laidlaw.

Ms Hilary Laidlaw: Good morning. I'd like to first thank this committee for the opportunity to address you. My name is Hilary Laidlaw. I am a lawyer with the firm of McCarthy Tétrault here in Toronto. My practice focuses exclusively in the area of estates law, and that necessarily includes a component of estate planning, including planning for incapacity.

I speak to you today in my capacity as a private practitioner and my comments are made on my own behalf and on behalf of the colleagues with whom I work at the law firm of McCarthy Tétrault in this area. They're based on our experiences with the Substitute Decisions Act and the feedback we've received from clients in advising them on matters to which the Substitute Decisions Act relates.

I'd like to address a couple of points with the committee today in the time that I have. First, in connection with the formalities relating to powers of attorney for property and for personal care, I'd like to put forward my absolute support for the repeal of the witness attestation provisions that now exist in the Substitute Decisions Act. Specifically in connection with powers of attorney for property, subsection 10(3) of the SDA provides that, "Each witness shall, if the witness has no reason to believe that the grantor is incapable of giving a continuing power of attorney, sign the power of attorney as witness."

I have found there's a difficulty with that provision, specifically relating to its interpretation. By that I mean

that there seems to be some dispute as to whether this particular provision imposes a positive obligation on the witnesses to satisfy themselves as to the capacity of the grantor to give the power of attorney either for property or for personal care. That has led, in my experience, to a difficulty sometimes in finding witnesses to a power of attorney document, particularly in situations where the grantor of the power of attorney is a resident of a hospital or perhaps a nursing care facility or other similar type of institution.

The staff at those institutions are often very reluctant to act as witnesses simply because there's this uncertainty as to what the obligation is to be satisfied as to the capacity of the grantor. For fear of becoming involved in subsequent litigation if the capacity is ever called into issue, staff at these facilities by and large are not prepared to act as witnesses. That can, in my experience, create difficulties simply in the procedure of granting the power of attorney or executing the power of attorney. If I'm required to go out to a client who is a resident in one of those facilities, invariably I'll be required to take a second witness with me, which can increase the cost of the whole process to a client, unnecessarily in my view.

The difficulty is not, however, confined just to situations where the grantor is in a hospital or other care facility. I often find that the question arises as to whether the practice that many solicitors engage in, including myself, is appropriate. Specifically I refer to the procedure whereby I would witness the power of attorney along with another member of staff at the law firm. The question that arises, obviously, is if this other individual has not had contact with the client sufficient to form an opinion as to his or her capacity, does this provision then prevent that person from acting as a witness if in fact there is this positive obligation to be satisfied as to capacity? Because of the uncertainty that this poses, there is a real question as to the propriety of that procedure.

I therefore reiterate my support of the repeal of this provision, which will clarify that the witnesses need not form this opinion. Certainly it is my view that if a solicitor is advising a client with respect to the giving of a power of attorney for property or for personal care, it's a professional obligation on the solicitor to be satisfied as to that individual's capacity, but in my view imposing the obligation on a witness is a far too onerous requirement.

Moreover, I don't think that the typical lay witness would have the ability to form that opinion or make an impression as to the capacity to give a power of attorney without a full knowledge of the terms of the Substitute Decisions Act, the test that that act sets out in so far as capacity is concerned with respect to both powers of attorney for property and for personal care. I think that

this proposed repeal of the provision will therefore clarify exactly what the requirements are for witnessing and make it clear that these are formalities as in fact they should be.

I think it's worth noting in this regard as well that there is no similar requirement for the witnessing of a will in Ontario. The Succession Law Reform Act, which governs the witnessing requirements in connection with testamentary documents, does also require two witnesses but does not require that the witnesses make any statement with respect to the capacity of the testator to make a will.

In my view, there is an analogy to be drawn with respect to wills and powers of attorney, both of which purport to deal with property and both of which are extremely important documents. I therefore see no justification in requiring that witnesses make the attestation statement in the case of powers of attorney and not in the case of wills. I think this will clarify the obligations and make them more concordant in both those circumstances.

Having eliminated the requirement that the witnesses make this statement with respect to the capacity to give a power of attorney, I can see no justification for increasing or adding to the pool of allowable witnesses by permitting the child of a grantor to witness the power of attorney. In my view, that should not be necessary since, if the attestation statement is no longer required, the available pool of witnesses will likely be greater.

In my experience, I often find that elderly people in particular can be quite vulnerable to their children. Unfortunately, this is a situation that I see very often, and I think the proposal to permit a child of a grantor to witness a power of attorney would open the door perhaps to situations of abuse. It would at least make it easier for the kinds of abuses I'm thinking of to occur and at the very least it would increase the appearance of impropriety in the witnessing procedure.

I think, having cured the difficulty with respect to availability of witnesses by removing the attestation clause, there ought to be less difficulty in executing powers of attorney and having witnesses available for them and there ought not to be this need to include children of the grantor in that allowable pool of witnesses.

0910

If I could focus for a moment on certain of the more substantive provisions in Bill 19, I would like to put forward my very strong support for the repeal and replacement of sections 16 and 17 of the SDA as they now appear. Those provisions deal with a situation in which a certificate of incapacity is issued with respect to an incapable individual and provide that at that time the public guardian and trustee become statutory guardian of the person's property. However, if there is a continuing power of attorney for property in existence, the Substitute Decisions Act as it is now written does permit the attorney, under that continuing power of attorney for property, to apply to the public guardian and trustee to replace her as statutory guardian.

The proposed repeal of these provisions brings into effect a different procedure whereby if there is a continuing power of attorney for property, the statutory guardian-

ship of the public guardian and trustee that comes into effect on the issuance of a certificate of incapacity will automatically terminate when the attorney, under the continuing power of attorney for property, files with the PGT a copy of that document and an undertaking to act in accordance with it.

What I find in my experience is that this is a provision, the provision that exists now, that causes the most concern for clients who come to me asking for my assistance in preparing for the event of their incapacity. When they're contemplating making a power of attorney, the purpose of doing so is to ensure the orderly administration of their own affairs in the event of incapacity in accordance with the scheme that they themselves put into effect now at a time when they're capable of doing so.

Clients find it very difficult to understand why the government can still have involvement in their affairs in a situation where they've already given thought to these issues and attempted to put into place a system that would allow them to continue the management of their affairs through their own choice of substitute decision-maker. This has, as I say, caused a great deal of concern for them, even though the circumstances under which the public guardian and trustee might become involved are somewhat rare. In other words, a certificate of incapacity has to be issued in order for the statutory guardianship to come into effect.

Repealing these provisions and ensuring that the statutory guardianship terminates immediately on filing that continuing power of attorney for property with the PGT will give individuals much more comfort that their choice of decision-maker will be respected and that their choice of the manner in which their affairs will continue to be administered will also be respected. It will give them much greater comfort in knowing that they can determine now, at this point in time, how their affairs will continue to be managed and, similarly, much greater comfort in knowing that they can continue to be privately managed as opposed to having outside involvement, whether by the government or some other source.

I would suggest, however, that since these provisions do in fact indicate that the power of attorney should be paramount and that an individual's choice of decision-maker should be respected, it might be worthwhile to consider something akin to the old regime that was in effect under the Powers of Attorney Act, whereby a person making a power of attorney for property had the ability to oust the jurisdiction of the public guardian and trustee in situations where a certificate of incompetence was issued under the Mental Health Act with respect to an individual in a psychiatric institution.

It seems to me the effect of what the replacement of sections 16 and 17 does is similar to that and that the Legislature could continue going farther and permitting any individual giving a power of attorney at this point in time to provide that the PGT would not become involved as statutory guardian on the issuance of a certificate of incapacity in situations, of course, where there is a continuing power of attorney for property in effect.

I myself have difficulty understanding what protection is afforded or what possible harm is addressed in having the PGT become involved as statutory guardian of property under these circumstances. I think that individ-

uals would be given much greater comfort in knowing that they have control over their affairs by allowing them to eliminate the involvement of the PGT altogether.

It seems further to make sense in that where there is a continuing power of attorney for property, the statutory guardianship of property by the PGT is likely only to last for a very short period of time, since it terminates immediately on the filing of the document. Therefore I think the end result would probably be the same in allowing an individual to specifically oust the jurisdiction of the PGT in circumstances of that nature.

If such a change is contemplated, however, I think it would be necessary as well to consider certain provisions that would allow grandfathering of powers of attorney that are done now under the Substitute Decisions Act as it exists and, in addition, recognizing the provisions that were put in powers of attorney done under the old Powers of Attorney Act that did oust the jurisdiction of the public trustee, as she was then known, in situations where a certificate of incapacity is issued. In other words, I think there have to be transitional provisions that will take into account powers of attorney done under the Substitute Decisions Act as it now exists, and similarly under the Powers of Attorney Act when it was possible to include a provision eliminating the involvement of the public trustee under those circumstances.

With respect to powers of attorney for personal care, I would like again to indicate my support for the provisions that would repeal the validation process. Once again, I find from my experience in advising clients on these matters that they have difficulty in understanding why, having made the choice of substitute decision-maker now with respect to personal care issues, there's still a possibility that that individual might not be empowered to act at the time when it's necessary to do so.

The validation process as it now exists is cumbersome and can be very expensive for the clients as well. It requires two assessments by a qualified assessor. The cost of these assessments has varied somewhat in my experience, but in any event, can be more than what is contemplated by the client. There is still this anomaly of the fact that a client attempts now to provide for the situation when he or she is incapable of making these kinds of decisions but the plans that are put into effect now might not be carried out if a validation is required.

So I think that the proposal to eliminate the validation process is a positive one. I think it will greatly simplify the process and give that much more force to the powers of attorney for personal care. It certainly has been my experience that clients react very, very favourably to the ability to give a power of attorney for personal care. This has been an issue with clients for many, many years, and for many years before the enactment of the Substitute Decisions Act, the most that a client could do was simply indicate in a document, often referred to as a living will, what his or her wishes were. But these of course had no legal effect, they had no legal impact. They were more simply an expression of wishes or intentions, and to the extent they had any affect at all, it was more one of moral suasion. They like the ability to be able to name somebody to positively make these decisions and to have that legally binding and effective, and the elimination of the validation process will simply ensure that the pro-

cedure or the system that an individual puts into place now for making those kinds of decisions will in fact be respected.

On smaller points: I'd like to also indicate my support for the provision proposed in Bill 19 which would specifically provide that an attorney for property can obtain information about the donor's property and can require such property to be delivered to him or her on request. Bill 19, in section 21, proposes that for these purposes property would be specifically defined to include a will. That is a question that I find is asked very often by the people who carry power of attorney for another person. It's one that we have grappled with many times in our office, whether we have the ability to release a will or a copy of a will to someone who purports to act under power of attorney. I think this provision would not only give clear guidance to those giving powers of attorney and provide them with an opportunity to modify that or amend it if they don't want the terms of their will to be disclosed, but also give clarity to the persons who have control or custody of that property. I think it clearly defines what our rights and obligations are, and in that sense I applaud the efforts of the Legislature in respect of that provision.

0920

I suggest that it might be preferable if the definition of "will" were expanded to include not only a will but also a testament, a codicil, an appointment by will or by writing in the nature of a will in the exercise of a power, and any other testamentary disposition. That in fact is the definition of "will" as is set out in the Succession Law Reform Act, and I think a similar definition along those lines would be well advised in the Substitute Decisions Act as well. It would make the language of both acts consistent and would also provide access by the attorney under a power of attorney for property to the kinds of documents that are contemplated in this provision.

It might in fact go further and allow access to any information relating to registered retirement savings plans, to pensions or other similar plans, these being somewhat testamentary in nature too, particularly in situations where a beneficiary designation has been made under these plans.

I would also like to indicate my support for the provisions proposed in Bill 19 that would give some relief to the guardianship that comes into effect by virtue of a committee appointment made before the enactment of the SDA. The Consent and Capacity Statue Law Amendment Act provides that anyone who was appointed a committee, prior to the implementation of the Substitute Decisions Act, under the Mental Incompetency Act, which of course has now been repealed, automatically becomes a guardian of the property on the enactment of the SDA, but that that guardianship will terminate two years after the enactment of the statute unless before that time a form has been filed with the office of the PGT in prescribed form by the committee.

Bill 19 proposes that a guardianship which terminates in this way, by the failure to file that form within two years, can be reinstated on application to the court. I think this provides some welcome relief to the effect of these provisions. Certainly anyone appointed as committee under the Mental Incompetency Act would not have

contemplated these changes in status at the time the appointment was made, and I think it therefore appropriate that some relief be given to the automatic termination of the guardianship that comes into effect with the enactment of the SDA. This will also ensure that there is no break in the administration of the incapable individual's affairs and that the person who is appointed as committee will continue to manage the affairs and give some continuity to the individual who is no longer capable of dealing with his or her own affairs.

I was told that I should limit my remarks to 20 minutes and allow 10 minutes for questions. I earlier provided to Ms Bryce a written submission that I believe the committee members have a copy of; if not, I can certainly make those available. I welcome any comments or questions that any of you have.

Mr John L. Parker (York East): Actually, I was enjoying listening to your words; I didn't want to cut you short just so we could ask questions. Thank you very much for your very helpful comments and, frankly, your very supportive comments. We felt we had improved the provisions of the statutes, and it's very reassuring to have the comments of people who have worked with this stuff, who have to work with it every day, who work with clients who are struggling with it, to have your comments that tend to endorse our view that we have addressed those elements of the existing legislation that have caused trouble in practice and tried to make something that is more workable and more practical for people to use.

You made a comment about one of the provisions in the current bill that would allow children to act as witnesses for a power of attorney. Your recommendation is that maybe it would be best to remove that. I understood your argument that given that there's no longer the requirement of a witness to attest, to sign the attestation document, maybe that will relieve some of the concerns that have existed on the part of witnesses in the past and made them reluctant to act as witnesses, and therefore it may not be necessary to broaden the category of potential witnesses. I wonder if you could give us a little bit more commentary on that, give us a bit of your experience.

Ms Laidlaw: Sure. First of all, I'd like to say that I do agree with your comments. I think that, by and large, Bill 19 has done an excellent job in addressing what I find to be some of the more cumbersome and difficult aspects of the Substitute Decisions Act. I recognize certainly that there's a balancing act required in so far as the rights of the individual to self-determination are concerned versus the need for protection of vulnerable individuals. I really do think that Bill 19 addresses many of these concerns quite well.

In so far as the witnessing requirements are concerned, my difficulty with permitting a child of a grantor to act as a witness is that whether or not there's an actual situation of influence or impropriety, there might be the appearance of it. I think you're quite right in characterizing my comments as meaning that there ought not to be the need to broaden the category further if the attestation requirement is gone. But my difficulty is that I very often see situations where elderly parents are subject to influence by their children; not always undue influence, but sadly, undue influence very often. I think this gives rise

to perhaps a greater opportunity to allow children to manipulate their parents.

The example that I gave in my written submission was that you could very easily envisage a situation in which perhaps a power of attorney is given to one child by a parent, encouraged by and witnessed by two other children, in a situation which is orchestrated by all three of them as a means of gaining access to the parent's assets and control over the parent's assets. It may seem like a silly example, but in my experience it's not. These things do happen, sadly all too often. I think it would just allow them to happen that much more easily if a child of a grantor is allowed to witness.

Mr Michael A. Brown (Algoma-Manitoulin): This is certainly a thorough and well-documented brief and we certainly appreciate it, because having practitioners come in here and give us some practical knowledge of the real world as far as how this really works is concerned is something we can certainly appreciate.

I too share some interest in your second point where you're talking about the witnessing by children. We've heard some contrary arguments by some other people in the legal community saying this is no big deal. Could you help me a little bit more with why eliminating the child in this or making sure the child is not able to witness the document is really an improvement? We have heard that in many cases it's very difficult to find somebody other than the child to witness the document. Have you experienced that problem where it's hard to find someone else other than one of the children?

Ms Laidlaw: No, I definitely haven't. I've experienced the problem that it's difficult to find a second witness under the existing regime because of the obligation that people interpret as being imposed on the witnesses to satisfy themselves. If someone who is not familiar with the individual is asked to act as witness, there's the concern that he or she might not be capable of forming the opinion as to the person's ability to give the power of attorney. A child could certainly do so. A child would have the knowledge of the parent that perhaps even a solicitor wouldn't have and would be able to make that assessment quite readily. But I have not encountered a situation in which the only other available witness would be a child. I should think that with the attestation requirements gone, it would be very simple to get a neighbour, for example; someone in the same building, for example; someone in the same residence, if it's a nursing facility or a home for the aged, to assist in that regard if the obligation no longer exists to form this opinion. I think it would be very rare where only a child would be available to witness.

Mr Michael Brown: As I think about this, it seems to me that whenever you're talking about witnessing a document, the person who's actually signing the document has a great deal of control about who will be witnessing the document. Therefore, in my view anyway, there's always some opportunity for some kind of coercion or something going on.

0930

Ms Laidlaw: There always is; I agree with that. I think that has been addressed, to a great extent in my view, by requiring two witnesses, which the SDA introduced. Prior to that, as you know, under the Powers of

Attorney Act, the requirement was that there be only one witness, so I think some protection has already been given by virtue of the fact that now two witnesses are required.

I agree with you that the donor of the powers sometimes has most control over who witnesses, but I don't see the distinction between a power of attorney and a will and I think it's very rare that an individual would have a child witness a will, primarily because a child is usually contemplated under a parent's will and witnessing by that child would revoke any benefit to that individual. So I don't see a difficulty in that situation and by extension, there ought not to be a difficulty in the situation of a power of attorney either.

Mrs Marion Boyd (London Centre): Thank you very much for a very cogent critique of the bill and I really appreciate some of the things you say. For example, in your section 4 in your written brief where you're talking about the definition of "will" being more defined, I certainly agree with that. I think it would be much more helpful to spell that all out because certainly, particularly to the extent of codicils, they often form a very important part of wills, don't they?

Ms Laidlaw: Absolutely.

Mrs Boyd: And it is important to do that. I wonder, in terms of wills, there's sometimes a memorandum as well. Would that cover a memorandum, for example, outlining specific items to be left to specific people?

Ms Laidlaw: I think that's an excellent question and, frankly, the definition that is set out in the Succession Law Reform Act that I've recommended be adopted in the SDA, might not cover a memorandum, but I think it would be appropriate for it to do so. Certainly, a memorandum can be incorporated by reference into a will, in which case it actually forms part of the will and in that event, I believe it would be covered by the definition.

Mrs Boyd: So if they say, for example, "or items detailed in an attached memorandum," that would do it.

Ms Laidlaw: Exactly. That incorporates it by reference and makes it part of the will. However, people also very often have what we call a precatory memorandum, which is not binding, but it is an expression of intention, often with respect to the disposition of certain household goods and personal effects. I think the intent of the provision is to allow the donor access to as much information as possible, with respect to the individual's intentions as to the disposition of property. If that is the case, then I think it would be appropriate to include even a precatory memorandum in that definition.

Mrs Boyd: Can I just ask you, if the wording of the section on the witness attestation provided, as you say, the mere absence of belief to the contrary, do you think the attestation would be appropriate? We have had many people in front of us, particularly from the health consumer population, who really believe very strongly that there needs to be some way to protect a person against people who have them sign a power of attorney when they're not capable.

Ms Laidlaw: I have some difficulty with that because I'm not sure how much protection that gives specifying that the mere absence of any indication that the person is not capable is sufficient. I would hope that no one would

witness a power of attorney or a will if there were any suspicion at all that the person was not capable of giving it. Certainly, as I indicated before, that's a professional obligation on myself and on any other solicitor, but as far as a lay witness is concerned, I would hope they wouldn't do it. Now maybe the concern expressed to you arises because people might not be aware of that unless it is specified, and if that seems to be the concern that's being expressed, perhaps that is the compromise point.

Mrs Boyd: Thank you very much,

The Chair: Thank you, Ms Laidlaw, for your most learned brief.

TORONTO HOSPITAL

The Chair: Our next submission will be the Toronto Hospital. I'd like to take this opportunity, on behalf of the committee, to welcome the learned member Gary Fox of Prince Edward-Lennox-South Hastings riding. I think it's the riding with the longest name, is it not, Mr Fox?

Mr Gary Fox (Prince Edward-Lennox-South Hastings): The second one.

The Chair: The second?

Good morning. Welcome. You have one half-hour, which includes questions.

Ms Margaret Keatings: Thank you very much and thank you for giving us the opportunity to present to you this morning. My name is Margaret Keatings and I'm the nursing director for education and research at the Toronto Hospital. Joining me today is Dr Neil Lazar; Neil is a member of the department of medicine at the University of Toronto and the Toronto Hospital. Both Neil and I are co-chairs of the hospital's clinical ethics committee and we are both members of the Joint Centre for Bioethics.

This morning, given its particular significance to us at the Toronto Hospital, we'd like to place the major emphasis of our presentation on the revisions to the Consent to Treatment Act and essentially the proposed Health Care Consent Act. However, we do wish to make one brief comment with respect to the Substitute Decisions Act.

Overall, I'd like to say that we and our colleagues strongly support the changes to these laws and we were really happy to see the amendments to the legislation.

With respect to the Substitute Decisions Act, we are pleased to see that the requirement that a witness have no reason to believe the grantor to be incapable of giving the power of attorney for personal care has been removed. This requirement caused great reluctance on the part of our staff to witness a power of attorney for personal care, since they were concerned about their liability if the patient was later proven to be capable and this posed many difficulties for us at times. Many of our patients who are acutely ill are anxious to have such a document completed and finding the required witnesses in an urgent situation was sometimes problematic.

The feedback we've obtained so far from our colleagues support the amendments in the proposed Health Care Consent Act and we'd like to identify those amendments of particular significance to patient care in our facility.

Foremost, we are supportive of the principles that underlie the objectives of the act which recognize the

significant role of the family and foster "communication and understanding between health practitioners and their patients or clients." We see these as important principles that reinforce the nature of the professional patient relationship.

We support the amendment to exclude treatments from the act that in particular circumstances pose little or no risk of harm to patients. We're aware that some of our other colleagues may wish further definition in this regard, but we believe that this is best left to the judgement of an educated health care provider and based on the particular needs of a patient within a particular context.

The previous legislation with respect to consent for a plan of treatment was confusing to our multidisciplinary teams. The amendments clarify this and we're pleased to see it clearly articulated that one member of the team may obtain consent for the plan on behalf of other members of the team or their colleagues. It is particularly helpful for many of the patients we serve that consent may be given for a plan or course of treatment that may continue from one institution to another or from one environment to another. This did pose difficulties for us previously.

The proposed legislation will improve patient care in at least two other areas. Presently, the public guardian and trustee is reluctant to consent to a plan of treatment on behalf of an incapable patient if that plan of treatment includes withholding or withdrawing treatment. The definition of plan of treatment should also alleviate this problem.

Also, the legislation allows for applications to the Consent and Capacity Review Board by a health care provider. Previously, health care providers had no apparent recourse when they felt that the substitute decision-maker was not acting according to the previously expressed wishes of the patient or in the patient's best interest.

For the remainder of the presentation I'd like to focus on the issue of rights advice.

We understand that there has been some discussion re the reintroduction of a mandatory requirement for health care providers to give rights advice to patients who have been found incapable of consenting to a specific treatment or plan of care. We have serious concerns that mandating rights advice in legislation will pose ethical and therapeutic problems in some cases.

Within the context of professional practice and the delivery of health care we must consider rights advice framed within the context of ethical clinical practice. This practice is guided already by a set of principles which in turn support the clinical-ethical decision-making framework within which we work. We deal daily with very difficult ethical dilemmas and must, together with our patients and their families, make some difficult choices and sometimes these actions are not always that clear cut. The best actions are not always that clear.

There's no question that health providers support the respect for and protection of patient rights. Providing mandatory rights advice with respect to incapacity and the patient's right to appeal, however, will not always accomplish that goal. In many cases, it will simply undermine the trusting relationship that we have with our patients. In other cases, it may lead to interference with

other significant rights of patients, such as the right to be protected from harm. In some situations it may be non-therapeutic and also harmful to mandate this particular approach.

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I'll just illustrate by sharing with you a case that came up recently. It involved an 81-year-old woman who was in the terminal phase of cancer of the colon. She was demonstrating symptoms suggesting that the cancer had spread to her brain. The woman was well-known to health care providers since they'd been providing care to her for approximately four years. She had a very supportive family, a husband and a daughter. They were around to provide her support and care for her in the home. Recently, though she continued to be oriented to time and place and recognized the other health care professionals around her and other family, she had this fixed delusion that evolved as a result of the metastases around her husband and her daughter. She firmly believed that they were two strangers that she actually had two other names for. They were holding her captive and they were attempting to poison her food. Other family members and caregivers tried to reinforce reality as best they could and tried to reassure the patient that she was being well protected.

It is reasonable to assume that in this delusional state she would react with fear and panic if given rights advice. Further, giving rights advice might reinforce or feed her delusion; she would very likely request an appeal and serious delays in therapy might result.

As you're aware, the legislation is very much based on the principle of autonomy which recognizes that a capable and competent individual is free to determine and act in accordance with a plan chosen by himself or herself. Other equally important ethical principles, such as beneficence, non-maleficence, that we as care providers must consider, at times may compete with the principle of autonomy, as suggested in our case. Although this principle has strong value in North American society, our patient and the client base is made up of many diverse cultural and religious groups who may place a strong emphasis on some of the competing principles. We as health care professionals must respect those values and beliefs. Therefore, mandatory rights advice may result in culturally insensitive care.

As an alternative to mandated rights advice in legislation, we suggest that each institution establish policies or guidelines that govern actions to be taken to protect the rights of their incapable patients. Internal multidisciplinary management teams are best situated to identify the problem cases, those where significant concerns are raised either by the incapable patient, their substitute decision-maker or someone else in the health care team.

Legislation requires the rule be enforced in every case, policies and guidelines are more flexible and outcomes can be monitored through audits and quality assurance mechanisms. In fact, through legislation perhaps health care facilities could be mandated to introduce such policies as I believe is already done with respect to policies around organ donation.

Further, we believe that all health care institutions should have a patient bill of rights that is widely visible

throughout the institution, posted on walls and included in patient handbooks.

Underlying the recommendation to legislate mandatory rights advice is a concern that patient rights may not always be protected. We share that concern, but believe the solution is education, peer review and quality audits. Health care professionals have become much more sensitive to these issues over the years as a result of greater emphasis on ethics.

There are many complex dynamics involved in dealing with ill, vulnerable patients. Almost all health care professionals do take seriously their role in caring for, supporting and protecting these patients. Forcing us through legislation to give rights advice to every incapable patient introduces an unnecessary intrusion into this caring, trusting relationship. It has the potential to suggest that rather than caring for them as people, we are introducing an adversarial tone to that relationship. Legislating a universal rule requires that all people are treated alike. Some people need and want to be treated differently. The establishment of institutional policies with principles and guidelines for providers to apply in a particular context would, we believe, have greater potential for protecting the rights of all the individual patients we serve.

That's the end of our formal presentation. Both Dr Lazar and myself would be happy to respond to any questions or comments.

Mr David Ramsay (Timiskaming): Thank you very much for your presentation. You really concentrated on an area of the bill that has caused a lot of debate among the different presenters and certainly is giving us a lot of cause for thought around the committee, I think, in all parties.

My gut instinct tells me that I would really like to see some sort of rights advice mandatory, but I think I would want to avoid too strictly laying out how it's to be given, because I think that's where we really need to rely on the doctor-patient relationship, how that doctor feels she should deal with her patient in giving that. You've given one example, and we've heard many different examples, of people in various kinds of incapacity who might have difficulty understanding this.

I am very concerned that we would leave it up to each institution in designing their own policy, whether or in what way they would give rights advice. What I would like to see is something mandatory about rights advice be given, but allow the policies to be developed by the institutions, maybe by the colleges, and I know many of them have guidelines. In any trusting relationship, I think it has to do with the sharing of information, and I would want to know what all the information is and what my rights are. That would certainly reinforce that trust. I'll stop there and give you an opportunity to comment on that a bit, if you like.

Ms Keatings: I find it interesting that the major focus is on rights advice with respect to this issue when patients have a lot of other rights in a hospital that have to be protected as well and we have a responsibility also for doing that. I wonder whether a way around it might be to introduce into the legislation the requirement that patients are aware of who is consenting on their behalf. If we have any concerns expressed that the patient is not

happy with that or there's a reaction, then we will ensure that they are aware of their right to appeal.

Maybe that kind of provision would allow for a little more flexibility rather than in all cases—if it's even the one I described, if we had told this woman her daughter and husband were consenting for her, she would have reacted. None the less I guess we just have to work out on the outlying cases that ensure patients know what's going on. Neil might have a comment.

Mrs Elinor Caplan (Oriole): If I could, this is a concern and then you could respond to that. This is also a suggestion that I made yesterday as to an alternative approach. The concern we have, the reason we're dealing with this at this time, is that the legislation's before us. Also, hospitals are held accountable for those other rights that you referred to. This bill removes that accountability.

For anyone who makes an evaluation that someone cannot understand and appreciate and is therefore incapable and who decides to call in a decision-maker, there's no obligation to have that communication with the patient; there's no obligation to let the patient know of their right to object or appeal; and there's no obligation on the part of the decision-maker who is called in to inform the patient. Yet both the provider, the evaluator, and the decision-maker are free from any liability for the treatment that is then given. Ethically, I think something's wrong with that. What you want to do is promote, in a positive way, the communication.

One of the thoughts I had yesterday was that you could say that that liability protection is only there if they have satisfied themselves and noticed that that communication took place. It would be left to the colleges or the institutions to set out the protocols for how that would happen. I just don't think that ethically—and this is what we're struggling with—you can say there's no obligation to talk to anybody, tell them what's going on and what their rights are, make the assumption that they should know and then say you have no accountability for it.

0950

Ms Keatings: I understand what you're saying and I agree that there needs to be something to reinforce that accountability. Maybe it's just the tone of the rights advice, and as I mentioned, it should be that—there are situations, for example, where we know that an incapable patient has made it clear to us, "Oh, don't talk to me. I get all confused. Talk to my daughter."

Mrs Caplan: That should be acceptable. The Mirandizing approach is bad, we all agree.

Ms Keatings: So maybe we should document that and be held accountable for the fact that we knew that. But to turn around and say, "We know you know but, by the way, we just wanted to make sure you knew we thought you were incapable," that's the problem we have with it. Sometimes it's harmful, it's upsetting.

Mr Rosario Marchese (Fort York): I want to continue with that line of thinking because, for the most part, we have accepted the fact that many have come in front of this committee saying, "There should be rights advice," and from an ethical point of view as it relates to consumers, we think that's important. But I realize the sensitivity around it, your sensitivity around it as well in terms of the way you've drafted this, because I think that

you have a sense that people want that as well and how to do that in a way that protects everybody, I suppose. The example you give is a very good one in terms of the difficulties we would have around rights advice and the problems that would pose.

But would you agree to rights advice except in circumstances where you might certify or the doctor might certify that that would cause a serious problem? That example you gave would be a good one. If a doctor says, "This is the reasoning we attach to this and we feel that this is a problem to this person because of the circumstances," if you attach such certification to it, that would be all right. Would that be all right with you or the institution?

Ms Keatings: Perhaps Neil could respond to that as one who probably more regularly than I has to give it.

Dr Neil Lazar: I think providing exceptions to the rule will make it more flexible but will still pose a problem at the bedside. To get back to an earlier question which is really related to yours, I think the important right that we need to protect is the right of the incapable person to know who is going to be making choices for them. That's really the most important thing.

The route of appeal, the access to the Consent and Capacity Board are details that obviously are important but they are the clumsy ones, to be quite honest, at the bedside: to stand there and say: "You're not capable. This is your route of appeal if you choose to do so." What's easy at the bedside is to stand there and say, "This is the proposed therapy." Ask patients, even if you feel that they're incapable, about what their feelings are about that treatment and talk to them about who will ultimately be the decision-maker for them for that particular treatment.

So, in response, what I'm saying is that just providing an exception to a rule isn't necessarily going to solve the problem. The problem really is the clumsiness of advising them about where to go rather than the easiness of just communicating with them who it is that will be making choices for them.

Mr Marchese: I'm not entirely sure it's that complicated. I can see why it can be complicated for some, but I'm not sure that I agree with you.

You talk about a patient bill of rights and you talk about each institution coming up with their own policies or guidelines. Do you think those guidelines should be equal across the board or that they should be different for every institution? You talk about enforcement as well. Would enforcement happen all of the time? Would it be regularly looked at to make sure that these things happen or would it just happen when audits are done, if it happens at all?

Ms Keatings: I think what we were trying to suggest there is that if hospitals have policies or standards or guidelines and they're the generally accepted standards and they have good quality assurance problems or quality improvement programs, then through general audit and review, we can pick up on the problem areas. We can pick up on the problem areas through patient complaints, through patient requests. Many hospitals have community relations type offices or patient advocates. We can pick up on problems there. With more education and more awareness, then more health care professionals are aware

of the standards and the principles. When they see their colleagues acting in a way that is substandard or is not protecting patient rights, they can deal with that and bring it forward.

Probably a lot of my colleagues will disagree with me, but I think there would be value in having a universal set of standards and a patient bill of rights provincially rather than leaving it up to an institution. In the patient bill of rights—this was Neil's suggestion earlier—you could in fact have a statement that said you have the right to know who's making treatment decisions for you if you're not capable of making these decisions for yourself. I don't believe they're in many bill of rights right now but they could be introduced.

Mr Parker: I'll just make one point, and I wanted to say thank you for your very good presentation this morning. To my knowledge, you're the first ones to coax out of my friends on the other side of the floor the begrudging concession that just possibly this isn't an easy question. Thank you very much for bringing that perspective to bear.

Mrs Caplan: That's bullshit.

Mrs Helen Johns (Huron): That's a hard act to follow. I just wanted to ask you some questions about—

Mrs Caplan: That is bullshit. That makes me really angry. That is absolutely not true, John, and if you want to make comments on the committee—

Mrs Boyd: I believe our rules—

Mrs Caplan: Absolutely. You're imputing motive and that kind of attribution is unparliamentary and it's unacceptable and it makes me damned mad.

The Chair: Excuse me, Mrs Caplan. I can understand that, but I don't think we have to use language of that kind.

Mrs Caplan: Well, call him to order and tell him he can't do that and then I'll withdraw.

The Chair: Mr Parker, continue.

Mrs Caplan: No, if he doesn't withdraw—I'm telling you that until he does withdraw, I'm angry and I would demand an apology and he must, because he has imputed motive and I request you, Chair, to do that.

Mr Parker: Frankly, Elinor, I wasn't—

Interjection.

The Chair: Excuse me, Mrs Caplan, you've made a request.

Mrs Caplan: Yes, I have.

The Chair: Mr Parker, do you have anything to say?

Mr Parker: Frankly, my comment wasn't directed at Mrs Caplan, but I'm happy to withdraw the remark if it causes offence.

The Chair: Thank you. Please proceed. And I assume Mrs Caplan withdraws the language.

Mrs Caplan: Absolutely.

Mrs Johns: I'm sorry for the time that we've taken from you. I just want to talk a little bit more about the rights advice, obviously, because that's your focus. I wanted to know two things. Your presentation in some ways is very much like Dr Singer's on Tuesday in the thought that there should be a responsibility taken on the shoulders of the professionals to deal with this issue and to do it in a way that informs the person and takes into effect what they need to hear to be able to make good

decisions or have their substitute decision-makers make good decisions.

One of the things I was interested in was your response to the most recent question about provincially based guidelines. My concern when I heard you answer that was that I would think the guidelines doctors would follow would be different than nurses, would be different than physiotherapists, not because they're not all handling people who may need rights advice but from a standpoint more that there may be different issues or things that come into effect because of different areas they work in with the patient. From my standpoint, was it a provincially legislated guideline or were you thinking about legislation from CPSO versus the nurses' association versus the physiotherapists'? Can you comment on that?

The other thing I wanted to know about was, this is the first time we've heard that it should be mandated by the institution as opposed to a professional body. I wanted you to talk about what was the thought process that was different between that.

Ms Keatings: With respect to your first question, I don't see why different professionals have to operate from a different set of guidelines, since they're essentially going to be principle-based and you would apply them to any context or any situation. A lot of the issues we face are similar; they're not dissimilar.

In relation to legislating those guidelines or such a policy, I'm not sure. I haven't really thought that through. Perhaps key groups or key professional organizations could work together on their establishment, such as the Canadian Nurses Association and the Canadian Medical Association and others have done with respect to the joint statement on the terminally ill. That's something that could be done. That's something that could be discussed by various groups.

Your last question was?

Mrs Johns: With respect to the institutions versus the profession.

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Ms Keatings: Right. Okay. Perhaps that comes from the fact that we co-chair the hospital's clinical ethics committee and a lot of the work we do is the establishment of policies that deal with ethical issues and important patient care issues. So it's not a new thing. Many hospitals have such committees and they have policies around withdrawing and withholding treatment, decisions around no CPR, policies around confidentiality, guidelines for making decisions. It's not a new thing.

Mrs Johns: I can see where you're coming from now that you've clarified that. I can see that because you're in a hospital, you probably have the ability to do that. If it was a smaller facility, for example, those people would have to be regulated by some other method, obviously, and they may not have the resources or the inclination to go forward. I now understand better what you're saying.

Ms Keatings: But a few years ago there was some legislation around mandating institutions to have policies around organ donation, and then there was assistance given to all the facilities around how those policies could be developed.

The Chair: Thank you for your presentation.

Mrs Johns: I have a question from the Chair, if I could, to these presenters. It'll just take a minute.

Mrs Boyd: I'm sure he'll allow it.

Mrs Johns: An 81-year-old person has terminal phase. A serious delay in therapy might result. What therapy would you do to an 81-year-old who had terminal cancer?

The Chair: This is a serious question, I'm sorry.

Mrs Boyd: Sure it is.

Dr Lazar: In this particular case, the therapy that might be considered could be radiation therapy, for relief of some of these delusional symptoms. That's quite possible.

The Chair: Thank you very much.

W. GLEN HOW AND ASSOCIATES

The Chair: Our clerk advises me that Ms Jane Doe has made an appointment on another day and then cancelled it and probably will not be here today. She was scheduled for 10 am. Fortunately, Mr John Burns of Glen How and Associates is here early and has agreed to proceed. Welcome, Mr Burns.

Mr John Burns: Thank you very much, Mr Chairman. It promises to be a lively session, which is always good for me as a counsel.

I'm a barrister and solicitor with W. Glen How and Associates, and my associate, Mr Don Kirkland, has been intimately involved with me on some of these issues. He brings something to my work that I find very useful: He's not a lawyer. There's a certain clarity of thinking that sometimes non-lawyers bring. My apologies to any barristers among the panel.

My senior is about 53 years to the bar, and that's usually his opening statement. Right now he's in Singapore defending Jehovah's Witnesses who are being prosecuted for doing something that in Ontario is considered quite acceptable. That's prayer and Bible study. Fortunately, in Ontario we've developed our rights recognition far beyond certain other countries that still remain part of the Commonwealth.

I've provided you a written statement which summarizes the presentation. I might just tell you as an outset to introducing myself our interest in this issue.

W. Glen How and Associates has long represented Jehovah's Witnesses. Mr How has been at the bar in Ontario since 1943 and I've been associated with him since 1979. We have often represented patients who want medical treatment—adults, minors and parents—but they want alternatives to a treatment that you probably well know they find objectionable on a religious basis, and that is blood transfusions, although, as an aside, with the Krever inquiry moving ahead so quickly, it appears there are more members of the public who are also interested in alternatives to blood products for medical reasons alone. Some of these cases I note on page 1.

The first case is *Malette v Shulman*, and that was the first case in Canada, to my knowledge, where the Court of Appeal of Ontario recognized under common law that an advance directive must be followed by a physician with an unconscious patient. This was a case of a woman who had refused blood products and carried on her person an advance directive to that effect.

Also there's a case involving a young 12-year-old at Hospital for Sick Children in Toronto, L.D.K. Her name is Lisa. That also was a decision where a provincial court

judge protected the right of a 12-year-old to refuse blood products and choose other treatment on the basis of her religious conscience.

More recently, there is a case from the Supreme Court of Canada, and I've provided a short reference to that case. In this case, the Supreme Court of Canada, by five justices, the opinion of Justice La Forest, recognized that there may be constitutional protection for a mature minor where they make medical choices based on their religious conscience.

I was pleased to see that in the governing principles of this new piece of legislation, it starts off in clause 1(a) that its purpose is "to provide rules with respect to consent to treatment that apply consistently in all settings."

I have been involved in a number of controversial situations. Patients who are sick need to know what the principles are and they need to know what their rights are and what the decisions are that have been made against them. It's just elementary fairness. Doctors also need to know what the principles are. It's a balance both ways. Physicians want to be there to treat, and if we have inconsistent rules, you will find us in confrontation and unfortunately I'm called upon and we're in court. I'll tell you, ladies and gentlemen, the last place that any patient needs to be in is in the middle of a court battle, and that frequently happens, I'm sorry to say.

But whether or not a person has a religious objection, the principle that I think this legislation really is seeking to advance is that nicely summarized by Mr Justice Robins of the Court of Appeal of Ontario, and I've put it out there, "The right to determine what shall be done with one's own body is a fundamental right in our society." I think, no matter what your political or religious persuasions are, everybody is agreed on that.

On page 2, I've set out three points. There are good portions to this legislation, but I feel there's a need for some constructive adjustments, and we have set out there three points that we're recommending. I'll go through them in order.

First, the legislation should not discriminate against mature minors. I would direct your attention to the principles outlined in subclause 1(c)(iii), because it states the principle, but if you notice, in 1(c)(iii) it's says it's limited to people who are "capable and after attaining 16 years of age." That really is not consistent with the common law, and I believe not consistent with subsections 3(2) and (3), which try to urge that there is a presumption of capacity.

I have set out cases, three of them, from Canada that make it clear the common law does recognize that capacity is the test for consent, not an arbitrary age.

One case there comes from the Court of Appeal of New Brunswick. It's a case called Joshua Walker. He was 15 years of age. He did not want blood products. The hospital went to court, of interest, under the Medical Consent of Minors Act, for a declaration that he was mature, and the judge took the position that there is no right for a minor less than 16 to refuse medical treatment, notwithstanding the medical opinion that this young person was mature. We had to immediately appeal to the Court of Appeal, which reversed that decision, so the young man could make his decision.

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Similarly, another case on page 3 from Newfoundland: Here the director of child welfare applied for a wardship order. I might mention this came on in 45 minutes' notice to a counsel who was there in Newfoundland and able to quickly appear, but it gives you some sense of the frustration when this matter went to court. The court there again took the position that he was a mature minor and he had the right to make his own choice.

There was a human side to this. If you notice on page 3, Justice Wells of the Newfoundland Supreme Court made the point that it's not a question of whether other people agree or disagree with his belief, "The point is that it is his belief, and it is a correct belief for him." That summarizes the fundamental point that I made at the outset. We all should be able to make these choices.

Finally, the case of Lisa, or L.D.K. involving a 12-year-old: In that case, in 1985, blood was given, contrary to her objections. The matter went to a family court judge, who dismissed the application of the children's aid society and condemned, in that case, the action taken to give this treatment without consent.

I set those out because I think it's pretty clear: The law in Canada—common law in Canada—recognizes that a mature minor must be given the freedom to make choices, and as I've mentioned, the Supreme Court of Canada has suggested that this may also be a constitutional right.

That right, under the Consent to Treatment Act of 1992, was given express recognition in clause 9(13)(b) and also in the regulation. But that is not what we find in the statement of principles in subclause 1(c)(iii). It specifically says "16 years of age".

So I've set out four recommendations, and if anyone wants to interrupt me with questions at the end of certain sections of my presentation, feel free.

First of all, subclause 1(c)(iii) should be changed by eliminating the words "and after attaining 16 years of age" to read "...expressed by persons while capable, be adhered to;" Make the test consistently be one of capacity.

Section 24, which is the provision that allows a doctor to go ahead in an emergency, would be read to not permit a mature minor to have an advance directive and the doctor could go ahead notwithstanding that advance directive because he's 15. Again, the suggestion is that the test should be one of capacity. So if you have a 15-year-old with evidence that he or she is a mature minor and has documentation to that effect, why should they not be permitted to rely on the same provision that a 16-year-old or a 17-year-old could?

Also, paragraphs 19(1)1 and 19(1)2 again repeat this 16-year cutoff. I would respectfully submit it should be eliminated.

Finally, bullet point 4, and this is something to add under miscellaneous, part IV, "The right of a minor asserting capacity to apply to the CCB applies notwithstanding the provisions of any other statutes."

Now, what I have in mind there is a conflict that you want to avoid with the Child and Family Services Act. I've recently been involved with a case that is still before the courts where the 13½-year-old was not told about the

right to appeal to the board, a hearing took place before a provincial court judge where she was not heard, a wardship order was made, she then appealed to the board and the board declined because the provincial court was involved. Counsel then, who asked me to assist him, appealed the case to the Ontario Court (General Division), who then said, "The board shouldn't hear it and I shouldn't hear it," and sent it back down to the provincial court.

In the meantime, this young woman was continuing to get treatment that she objected to, including pulling out IVs, and by the time we could get a provincial court judge to hear it, then the children's aid society said, "We don't think we need any more wardship order." So now appeals are going forward and she's extremely frustrated because all this took place and nobody heard her.

Why should a mature minor be deprived of going to the board? It can convene quickly, it has people who are specialized in determining capacity and you have a statute that sets it out. Provincial court judges, under their statute, have no test or jurisdiction to determine legal capacity. I think mature minors should have access to the board. That provision would permit that. That's the first set of recommendations.

The second is this: The legislation must ensure that a patient asserting capacity but found to be incapable by a physician is informed of his or her right to appeal that finding to the Ontario Consent and Capacity Board. I think I'm repeating something that I heard discussed just prior to my coming in. The act doesn't clearly provide for it. I think it should. Anyone who has a decision made against them adverse to their interests should be told. It's a fundamental principle of fairness in law. And they should be told where you can go if they want to seek a remedy.

On page 6 I've set out a provision that I would recommend be added under "Capacity."

"Where a health practitioner finds that a person asserting capacity is incapable with respect to the treatment, the health practitioner shall immediately inform the person, or the person's parent or other person who is lawfully entitled to give or refuse consent to the treatment, of the finding of incapacity and that the person has a right to apply to the board for review of the finding."

It's simple; it's not complicated; it should be done.

The third recommendation refers to section 21. Here's my concern: There's an adage that if something can be misunderstood, it will be misunderstood. Read section 21:

"Authority to consent to a treatment on an incapable person's behalf includes authority to consent to another treatment that is necessary and ancillary to the treatment, even if the incapable person is capable with respect to the necessary and ancillary treatment."

My concern is that this section could conflict with the clear right of an advance directive as spelled out in subsections 4(2) and 19(1). Let me give you a factual situation that illustrates my point. In *Malette v Shulman*, Mrs Malette, one of Jehovah's Witnesses, was admitted to an emergency ward of a hospital following a motor vehicle accident. She had on her an advance directive: "No blood under any circumstance." Her husband was killed automatically in that accident, unfortunately. She

was unconscious. We know the courts upheld the advance directive and found the doctor liable for damages and battery.

Now change the facts. Mrs Malette is one of Jehovah's Witnesses; her husband is not. He disagrees with her decision and he's alive; he's not injured in the accident. Someone approaches him for authority under subsection 18(4). Would he have authority to consent to the blood products, given the broad language of section 21? He shouldn't have. Advance directive says that binds matters. But read section 21. I fear that the broad language in that could raise a conflict. As I say, if something can be misunderstood, it will be misunderstood, and we wouldn't want to be back in a position of now testing Malette and Shulman all over again. No patient wants it and the doctor doesn't want it.

So my suggestion, on page 7, would be very simple. Just repeat a basic principle: "Authority to consent does not include authority to override a capable person's advance directive." Add it to the end of that section and it would avoid the problem.

Those are my submissions. Thank you for listening. Myself and Mr Kirkland would entertain with enthusiasm any questions you have.

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Mrs Boyd: Thank you for your presentation. We certainly have heard from others, both lawyers and various lobby groups, about in fact reinforcing the age of 16 and trying to in fact take away the capability of mature young people. So it is very interesting to see the other side, and the case law that you have provided for the committee is very, very useful, because of course the former government, in deciding that there should not be an age, went through all these cases. We agree that in fact the precedents have been set that would prevent an age from being there. So it's good to have this.

I think one of the issues that is very clear to the committee is that in trying to do legislation like this, the effort to try and balance out the competing interests, particularly of different religious groups, is very difficult. I think you can appreciate that as well.

One of the issues that you've raised, though, is this issue of extending this in these other sections. It seems only logical, frankly, to do so if the override is that capable people get an opportunity to give advance directions, and certainly that's the principle that's set out in the act. I think the real concern that will be expressed is the effort to try and balance these things out.

You've had lots of experience with physicians. Is it your experience that when professional health providers are faced with situations, they are very likely not to pay very much attention to a capable, mature young person?

Mr Burns: My experience is that there are three types of physicians, to make a broad generalization. There are those who are determined to do it their way no matter what. There are those who are men of great concern for their patient and they are willing to go the full limit to respect the patient. The vast majority are in between. They go whichever way the wind blows and liability hangs over their heads.

In the recent case I've just mentioned to you, the CMPA was involved right from the start. In fact, before

the girl was ever told about what was going on, counsel for the CMPA was advising the doctor. I'm not against that, but there is that fear. We need to have rules in this legislation that are clear so that we as counsel, whether advising the patient or the doctor, give them some consistent direction, so the bottom line is adhered to. Is this minor capable? Then respect their choice and their values.

Mrs Boyd: Because one of the issues here—and you heard some of it—is that we've had the reluctance of professional health givers to take the responsibility, the accountability of in fact informing people that they're incapable, informing them of their rights of appeal. Some of those reasons may be valid from their perspective, but when it comes to this sort of an issue, it really raises this spectre of whether or not this will be applied, particularly because this bill holds physicians, holds health care providers not liable for anything that occurs as long as they are following the Health Care Consent Act.

So these issues that you've raised in your recommendations, they would have no obligation, and that liability hanging over their heads wouldn't impress them because they would be saved from liability because they would be following the letter of the act.

Mr Burns: Not necessarily. They're state actors if they're acting pursuant to a statute and they may be liable under a constitutional tort. It's a different area of law. It hasn't been developed in Canada; it has in the United States. But I don't think liability should be their concern. The doctors I've worked with have no problem in being honest with their patients, being ethical with their patients and getting good results with their patients. If doctors would think in terms of just being honest—I'm honest with my clients when I tell them, "I think that is a bad move legally and I'm going to decline to take it." That's just being honest. If it's difficult, then learn some communication skills on how to simply be honest with your patient.

Mrs Boyd: So you would think that any kind of sanction against medical professionals who were not being honest with their patients in fact should come under their own professional self-governing colleges rather than under the legislation in some way?

Mr Burns: My experience with the self-governing colleges over several years—and I have to hark back to Mr How's experience—has been disappointing. However, it is a check. We found that after Malette and Shulman came down as a decision, across Canada, when Jehovah's Witnesses showed up with a "No blood" card, as it's sometimes called, everybody paid attention. Why? The court spoke; the CMPA listened. Liability was the driving force.

Mr Garry J. Guzzo (Ottawa-Rideau): I first of all want to thank you for the professionalism of the presentation. I think when the members of the committee have an opportunity to assess the principles involved that you have brought forward and reflect upon them and apply them to some of the other presentations that we've heard, the benefit of your brief is going to be totally appreciated.

I speak as a former family court judge, 11 years of doing the type of work that you have outlined here. I

want to tell you that contrary to what you might think from reading some of my decisions, I have been an admirer of the professionalism and the positive approach that has been adopted by your associate over the lengthy period of time that he has practised in his field, particularly, I think it must be remembered, at a time when human rights were not appreciated and accepted and when it was not popular to do the type of thing that the people in your position can do today without criticism.

There are two points that I want to drive home, the first one very seriously. I think it has to be understood that the argument you make in the first instance with regard to a mature minor is not necessarily in the best interests of your overall clientele. Many times there would be a parent with the religious beliefs attempting to impose them on a child, as opposed to the child being in a position to express their own view. In that case, that would be in fact contrary to what one might consider to be your own position.

Mr Burns: Our position is, as advanced by the Supreme Court of Canada—and I feel Justice La Forest's opinion sets out what we wanted—where you're dealing with an infant that cannot make its own decision and parents want a particular treatment and the doctor disagrees, then you need a procedure in place of fairness to the parents so they can advance their requests for alternatives to blood. That case established that parents have a constitutional right. The Child Welfare Act, Justice La Forest found, met the procedural requirements. But with a mature minor it's different. If a mature minor said, "I want a blood transfusion," and the parents didn't, our position would be that it's the minor's choice, it's not the parents'.

Mr Guzzo: What I'm saying is that I commend you for that, because it has to be accepted that it could be termed, I suppose, contrary to the best interests. I commend you for that.

Mr Burns: Actually, it's not contrary. Jehovah's Witnesses do not baptize children. It's their position that the minor must make their own choice.

Mr Guzzo: I appreciate that. I didn't want to get into the religious aspects of it, but I think it underlines the fairness of your proposal.

The other point I want to make for the benefit of the committee is that in my 11 years on the bench there was one unique aspect, and that is that never once did I ever see either the cases that I handled, maybe a couple of dozen, or the others of my confrères—we never dealt with one of those between 9 and 5 on Monday to Friday. I'd ask the committee to consider that.

Mr Burns: Your experience is like mine. At 2 or 3 o'clock in the morning, the judge doesn't want to be there, nobody wants to be there. That's why in this past case, the counsel appointed by the court for this young girl was very frustrated, because after the order was made, he thought, "Let's go to the Consent and Capacity Review Board." It decides one issue, capacity, so when he got there, they said: "No, you can't. You go back to the family court." It unfortunately has ended up in snakes and ladders, but this young girl never got hurt as a result.

The board should be there. If there's one point I want to make and emphasize, it's let's keep the board open for mature minors who want that remedy.

Mrs Caplan: Thank you for an excellent brief. I think you've provided all the research the committee needs to deal with this issue that's been plaguing us. However, in point 2 on page 5, while I agree with you that "the legislation must ensure that a patient asserting capacity but found to be incapable by a physician is informed of his or right to appeal that finding to the Consent and Capacity Board," we've heard from a number of presenters that the notion of Mirandizing has created an atmosphere where the law will not be complied with.

I know what your reaction is to that, and I have the same one. My back goes up immediately. But in the desire to find a way to foster that kind of communication with an incentive as opposed to a model that would require enforcement, I've made the suggestion that perhaps the threat of liability is the place where you could accomplish that with an incentive. This legislation removes any liability when the treatment is given, and what I've been suggesting is that perhaps that's the place to insert the clause that says, "You only have protection from liability if you have communicated your finding that a person is unable to understand and appreciate and that they have the right of appeal, or if you're satisfied that the substitute understands." How do you feel about that?

Mr Burns: Well, it would be a check. I must say that I have sympathy for the doctors, because you're trying to build a relationship of trust without putting a gun to his head, and emphasis needs to be placed on communication skills. But I have to be honest. In my experience I have seen liability as a factor, as in Malette and Shulman, that does work. I also emphasize that if a doctor relied on the no-liability provisions of this statute but was found to be acting pursuant to this statute and yet violated a constitutional right, those sections could be struck down. If I were a counsel, there are ways to get around it.

But that shouldn't be the thrust. The thrust should be, get the doctors simply to be honest. I have a problem when I hear these discussions. Yes, it's difficult. There are many difficult things I have to tell my clients. For example, the honourable member over here mentioned one. I have to tell parents, "If your 15-year-old wants a blood transfusion, that's their choice." That's not an easy thing to say to devout parents who want their child to follow their religious views, but that's my responsibility as a counsel because we are balancing different interests and rights. Can't a doctor do the same simply because it's a good basis on which to build trust?

Mrs Caplan: How do you build that in here so it's an incentive and not something that will be ignored and will require enforcement? We don't have a legislative penalty in this and we have taken away all litigation as an accountability option.

Mr Don Kirkland: I realize there isn't a legislative penalty in here, but one of the recommendations requiring that the doctor, who after all, according to the legislation, may make the decision—someone decides the patient is incapable. If the doctor has that responsibility and authority, why does he or she not also have the responsibility to inform? I'm not a lawyer, but as Mr Burns said, if the legislation requires that the physician ensure that the patient or responsible decision-maker is informed but chooses not to do that, the doctor isn't following the provisions of the statute. I agree with Mr Burns. Our

approach is not to come in with a heavy stick. Still, there has to be some accountability to inform the patient.

Mr Burns: I have to be honest. In my experience, the liability factor has been one that has changed practice. I wish it did not. I wish it could be built solely on trust.

Mrs Caplan: If there is no statutory obligation to inform, you believe they should not have freedom from liability.

Mr Burns: Based on my experience.

The Chair: Thank you, Mr Kirkland and Mr Burns, for your presentation.

We don't have our next witness here, our 11 o'clock witness. We'll recess until 11.

The committee recessed from 1035 to 1102.

MICHAEL GORDON

The Chair: Our last submission for the morning will be made by the Baycrest Centre for Geriatrics, Dr Michael Gordon.

Dr Michael Gordon: Actually, I'm here, I hope or believe, not representing just Baycrest Centre. That's where my main site of work is, but I hope I'm representing a perspective on those who care for the elderly. My formal position includes Baycrest Centre, the University of Toronto, Mount Sinai Hospital, the regional geriatric program, and the Ontario Medical Association's committee on long-term care, so I hope I can bring a perspective that's shared among many people who care for the elderly. The formal part of my presentation, which has been handed out, I reviewed with a number of colleagues in the social services and the patient representative, or whatever we call them now, the ombudsperson, to try to get a perspective that wasn't purely a medical perspective.

First, I want to commend the government for modifying the previous legislation and repealing the Advocacy Act. The previous legislation, though I'm sure introduced with the best of intentions, resulted in procedures and practices which were overly cumbersome and in many ways interfered with smooth care provision activities and at times caused unnecessary tensions among patients, families and other health care providers and professionals. From the perspective of a geriatrician, I have observed among my colleagues and in the facilities in which I work an inordinate amount of time being expended on activities that did not add substantially to the wellbeing or safety of the patients for whom I care.

I'm on e-mail, and every evening I would have five e-mail questions about, "How do we do this and who do we call?" I thought, "It's just a learning process and people will get used to it," but I think at the end most of us felt—and I have my own personal anecdotes which, if I have time, I can relate—that clearly it was not adding to anybody's benefit but was cumbersome. So I really welcome the tenor of the changes.

There are just a few issues I and the colleagues I spoke to can identify in the newly proposed changes to the legislation that I believe should be reviewed again in order to further provide optimal care and protection to the recipients of our care efforts. I suspect that over time one fine-tunes any legislation and regulations as you see how they work.

(1) One of the issues is the meaning of "assessor" and his or her qualifications under the act. I know this is a difficult issue. We should define the assessor based on professional qualifications that are most likely to provide the knowledge base and clinical ability to make judgments about the capacity of a person. This should be part of a professional standard of, for example, physicians rather than limiting the role to those who have formally applied for and received such designation.

Under the previous legislation, I had all kinds of people ask if I would write letters of reference for them to become assessors. Some of them were very capable people, but I had never actually seen them work in that capacity. With physicians, certainly ones I have been involved in training, I can observe how they do something, but with many of the other people I would not be in any position to know what their standards and capabilities are. It should certainly be part of a professional standard, but those who have been trained as part of their profession to know how to do it should be able to do it.

(2) A physician should be able to defer to another, more experienced and expert physician the determination of capacity, or be able to arrange for a transfer of responsibility for such a determination in a way that will encourage physicians to ask for and receive advice, especially when the issue is particularly contentious or difficult.

If I understand correctly, some physicians were reluctant to take on the responsibility having to do with capacity if they weren't the attending physician. I think sometimes patients then fell through the cracks as to was actually going to take the lead in determining a person's capacity, especially where it was somewhat contentious, as in the case at Sunnysbrook which, as we know, had a disastrous, tragic outcome. But many of us have seen other cases that were less traumatic but where the issue was the same.

(3) The definition of "treatment" should include the term no "material or unusual" risk, or, as I've underlined, no "reasonable and commonly acknowledged" risk as perceived in the best medical judgement of the acting physician. "Treatment" should also include something to the effect that there is good evidence to believe that the person agreed to such treatments in the past by the process of assent and there is no reason for the practitioner to believe the situation to have changed.

I put this in because very often people don't think of treatments as being ordinary things, yet they are, under the legislation. If I look at my own organization, people come for dental care, foot care, ear wax removal, and if for some reason those weren't included in the plan of treatment—if you move into a home for the aged or something and somebody doesn't say, "By the way, if next year you have wax in your ears, will you agree—" People don't think of it, so we have a whole process where the ears are looked at and if they're full of wax, you clean them without getting consent, because the assumption is that this is the kind of thing most people have agreed to all their lives, or that their toenails have to be cut, or ordinary dental care—not dental surgery.

Our experience is that under the old legislation, people felt very constrained, and if you didn't have a consent for

this ordinary activity, you started looking for a family member or a surrogate, and they're not always easy to find. If they're not readily available, you may end up not providing simple dental care for a weekend because on Friday you couldn't find someone, when you know that this person for 80 years had dental care and why would they suddenly not agree? In the tenor of what would be considered a plan of treatment, it should be inclusive for the ordinary, regular things that most people agree to and that have little in the way of unusual or material risk, whatever term you want to use.

(4) Now that the rights advisers have been removed from the legislative framework—and I support the principle of that; I think it was an extra, unnecessary layer—it would, however, be worth considering, perhaps in the regulations rather than in legislation, that all facilities designate a person or persons, such as designated social workers, who will have a role that ensures people under care of their rights under the legislation, so that a further level of advocacy will be ensured despite the elimination of that piece of legislation.

I use social workers only because, in my experience, most social workers feel a very strong advocacy role, even though it's not formally designated, towards their clients. But if there were in regulations something that made it mandatory for all long-term-care facilities, which I'm looking at as an example, to have a social worker designated so the role is an important role so they aren't in conflict, let's say, with the policies of the institution, so they could say, "Part of my role is to be an advocate and I'm responsible for that," I think we could achieve the same kind of protection that I know people from the advocacy group want, to make sure that people are not lost and, because they can't always express their own needs and rights, that they have somebody you can be sure looks out for them. Not every organization can designate a patient representative or ombudsperson, because that's a somewhat expensive undertaking.

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(5) In the sections dealing with emergency treatment, the concept of mental harm should be added to the concept of sustaining serious bodily harm, which is the way it's written. This is just to make sure that it's not interpreted too literally, because it doesn't acknowledge the importance of the effect of mental suffering and anguish on clinical care and outcomes of treatments. This is especially the case with older individuals who might be in a situation waiting for something to happen, where the anxiety and anguish can be even greater than the potential physical harm. I think just having it in there highlights it. Some could interpret "physical" as including that, because certainly in modern medicine we don't separate the mind and the body, but others might not, and having it designated assures that it will be considered an important issue.

(6) A plan of treatment for someone entering a long-term care facility on a permanent basis—this follows up what I said earlier, but I've enlarged on it—should include the concept of the ability to include the wide range of expected treatments for the conditions that exist at the time of admission and for the foreseeable repercussions of the conditions, as long as those treatments, as

I said before, do not care an unusual or material risk or one that is not reasonably and commonly accepted. That way, a consent process does not have to be developed which includes treatment options which may not be inclusive and which may require excessive formal requests for simple treatments or changes in treatment like, as I said before, dental care, foot care, all the little things we all go through and the difficulties in contacting family members. At the time of admission, it should be understood and agreed to, or at least the option offered, for a wider-range consent to be provided by the patient or surrogate.

Likewise, for example—and we've been through this recently with immunizations. We now know that all the major bodies that deal with this recommend yearly immunizations for influenza, a periodic for pneumonia and other things. That can be very difficult to get, and you may have only a window of opportunity. I think there should be a possibility for having a consent for immunizations, with the proper explanation, at the time of admission so that one doesn't yearly run around trying to get everybody involved, which can be very difficult.

I know that in the past they've in a sense abrogated the regulations to allow us to immunize people, because it's almost impossible to get consent and if we actually followed what was in the legislation previously without the ability to overcome it, we'd probably have massive outbreaks of very serious influenza because of the logistics. I think we should promote that however we can.

(7) The fact that it is no longer formally required by legislation to inform people of their incapacity does not remove the professional responsibility and ethical obligation of telling people the truth about their need for care and their inability to make decisions on their own behalf. There's a large body of literature, in the geriatric literature, about the importance of informing people. The real issue is not the fact of informing; it's the timing and the process. We have to make sure it's done in a way that people can absorb, digest and take in their stride.

I've certainly witnessed, because people were trying to follow the previous legislation to the letter, people being really upset, not by the knowledge itself but because of the process of having to do it now when now wasn't the right time but tomorrow might be the right time. As professionals, we have the responsibility and obligation of telling people within a reasonable framework what's going on, whether it's capacity or anything else. This should be done according to the best professional standards and knowledge about the timing and process by which this information is provided.

That's my formal presentation. I'm certainly available for questions.

Mrs Johns: I want to first of all deal with the mental harm issue in the emergency treatment. I've been trying to think about this and put my mind around it. What I need to know from you, to be able to think more clearly about this—this is how I've rationalized it. It seems to me that if a person is coming into mental harm, the potentials are that they could hurt themselves or they could hurt someone else. That would fall under section 6 of the act, which is the ability to be restrained—well, certainly the ability to be affected by the common law as a result of the potential damage to someone else.

Is there some other reason you feel mental harm should be put into that act? Is there something else, where they wouldn't be damaging themselves or someone else, as in section 6, that might fall through the cracks there?

Dr Gordon: I'm not just thinking about the fact that they could hurt themselves, and certainly restraints is one of the last ways we'd ever want to—

Mrs Johns: Absolutely.

Dr Gordon: It's a treatment of last resort. If you could avoid the necessity for that, that on its own would be a reason to be able to act; if you have to restrain somebody to protect them, you're doing something wrong.

But I'm concerned about the effect of postponing something on their emotional makeup and psyche, besides the fact they're doing harm, that they may be carrying with them. It may depend on what their previous experience was. People's past experiences can play heavily on how they perceive a new situation.

If somebody—we just went through this—had a terrible experience during the war in a medical setting, a medical setting that looks the same can be very damaging mentally if the process is delayed, for whatever reason. That emotional harm is a factor, and I think we should consider it. It's an individual situation, but I wouldn't want us not to be able to do it because it hasn't been enunciated. Probably a good clinician would find a way around it and say, "Well, the physical harm can occur because of that."

I've done this so much of my life in various jurisdictions I've worked in, where you find a way to achieve what you know has to be done. You've got legislation, and you say, "Okay, I'll call this that." But you don't want to have to do that. You want it right up front. If you want to say "significant," whatever term, but it has to be of a degree that you know can affect somebody deleteriously.

Mrs Johns: I understand. I'm not sure I would want to put that in. I'll have to think about that some more, because it may be very subjective. I think we can always guarantee what true physical harm is, but mental harm, when you're coming into an emergency room, I'm unsure about that.

The section in the act I wanted to read, because I really must have expressed the question poorly, was, "This act does not affect the common law duty of a caregiver to restrain or confine a person when immediate action is necessary to prevent serious bodily harm to the person or to others." It's not just restraining, it's confining.

Dr Gordon: Yes, but that's the same thing. Whether you're confining them to a bed with restraints or keeping them in a locked room, in the care of the elderly we try not to do that as a way of solving a problem, because it has its own risks.

Mrs Johns: Once again, you and the Toronto Hospital are suggesting that somehow the facility should be looking at rights advisers or talking about providing rights advice, as opposed to the "practitioner," which we've been kind of bantering around here. I know the reputation of Baycrest, so it's probably a result of it being such a fine institution. Can you see that all facil-

ities throughout Ontario would at some time have the initiative and the desire and would actually provide rights advice to people, as opposed to the practitioner?

Dr Gordon: You mean the practitioner who is the primary care practitioner, such as the physician or caring nurse? You're right, I'm very lucky. I've been in the situation where I have somebody who is separate from all of us who acts as an ombudsperson, and I had the same experience at Mount Sinai. I know there are a lot of small facilities that obviously couldn't do that. But every facility has professionals.

What I'm saying is that a professional could be designated as having that peculiar responsibility, in addition to what everybody else does, and say: "Remember, when you're wearing that hat, you're not just wearing it as working for us; you're wearing that hat as part of a professional standard"—and it could be part of a regulation, if you called it—"that you have to comply with in an extraordinary way, to make sure you're complying with this component of what's going on, that you are there to think very carefully about whether this person's rights are being respected."

Over the years, I've had that from plain, ordinary social workers all the time. They're good people, but they don't have it as a responsibility, and they often get caught between their professional responsibility and the place they're working for. Someone says, "Get that person out of my bed; I need it," and they're saying, "Gee, I don't think they're ready to go home." If somebody is there as the responsible—and it could be somebody who's not involved in that person's care. It just brings a more objective person. I don't think you have to create another position. It could be part of a person's responsibility, but acknowledged and designated as such.

Mrs Johns: I'll let Mr Marchese ask about conflict of interest.

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Mr Michael Brown: You raised some issues that were raised yesterday by the dental association. They're particularly concerned, or at least looking for clarification, around a treatment that in the circumstance poses little or no risk of harm to the person. They are confused, I gathered from them yesterday, about whether it's just controlled acts that are treatment and therefore you don't have to be terribly concerned about some routine practice that is not a controlled act and therefore you don't have to worry about the Health Care Consent Act. I hear you expressing some of those concerns today. Could you help me with that a bit?

Dr Gordon: I guess the issue is that if it's defined too severely, the ordinary things that people have done all their lives they may not be able to do. Whenever you create legislation—I certainly in my life have been through a lot of things in legislation, whether here, in the United States, wherever I've lived. You say: "What does the legislation do? Is it a roadmap? Is it a framework? How prescriptive is it?" You look at what's the goal. You want to make sure people get the care they need in a way that's safe and reasonable, that doesn't put them at risk without them at least knowing what the risk is. We all want to make sure.

But there are many things we've done all our lives that we take—when I go to the dentist now, he does not say

to me: "By the way, you know this filling? I could break the drill in your mouth." You kind of know, because all these things we do every day. If somebody's done them every day of their lives routinely and this is part of it, you don't want to put an unreasonable barrier to be able to get it done, especially when the consequences are not life and death, but discomfort. A toothache on Friday till Monday is uncomfortable. You don't want to have to give them Codeine, which is going to make them dizzy and dopey and whatever.

It doesn't matter how it's formulated, just to make sure this range of activities that clearly—it's not that they don't have any risk. Everything has risk. Drinking water has risks. I've had people choke on water. It's to make sure we don't have excessive barriers to these ordinary things, or that they can be included in the process, whatever we call it, at the time of admission, saying, "We're going to be looking after you for a whole range of things, including daily activity things and personal care and the medications you're already on for the illnesses you have, and in addition, these things that are part of the normal care provision," some of which actually come under the role of professionals, such as clearing of wax. Lots of people clear their own wax without going to a doctor, but if it's hard to get out, they go to a doctor. The interface between that is not clear, but sometimes you need a professional to do something which isn't that complicated, but you can't do it on your own anyway. You don't cut your own toenails when you're 80 and arthritic, because you can't, but you've cut your toenails all your life. I just want to make sure that we don't have excessive barriers to ordinary, low-risk activities.

Mr Michael Brown: One of the things the dentists were saying, if I understood them correctly, was that under the Regulated Health Professions Act, each profession has its own controlled acts they look at, and is it only those controlled acts under the health professions act that you have to be concerned about, everything else being low-risk?

Dr Gordon: Some of the controlled acts are still—I mean, putting a filling in is a controlled act. It's low-risk. We do it all our lives. But if you have a toothache on Friday and your filling has to come out and get put in, if it's too prescriptive, you're stuck. Somebody should be able to indicate early on, a surrogate or the person, that "For these things, I will give you permission so you don't have to run and try to find it if I can't give it myself." A family member could say up front: "Look, he's always had his teeth done. Continue doing that."

Mr Michael Brown: Your question is, does it have to be absolutely prescribed?

Dr Gordon: Right, because I think you'll always miss something. I could probably come up with broad categories if we said dental care, foot care, ear care, a bunch of things that are common, recurrent, unpredictable that you want to make sure people have. Maybe you end up putting them in your upfront consent that says, "These activities I give permission for, unless they are ones that go beyond in terms of risk."

Mrs Boyd: Thank you. That's been very helpful. One of the issues around having someone designated by a facility is, as Mrs Johns suggests, conflict of interest, and

I'm wondering if the vision you had—you talked about the similarity to an ombudsman, who obviously has a line of accountability that gives them freedom from coercion by their colleagues and so on. You're thinking of that kind of thing.

Dr Gordon: Yes. Look, we are all always in conflict of interest in a sense. I'm a physician. I have a responsibility to the province, to my professional standard, to the college. I'm an employee of an organization. I have a conflict with my own staff. On the one hand I'm administration and on the other hand I'm a member of the medical staff. We all have that, and I think as long as we recognize it and it's clear where we're sitting at any given time, you can work those things through so that a person knows who they're representing at the time.

Mrs Boyd: Would you think it would be reasonable for a facility to give the name of the person it wanted to designate to the Consent and Capacity Review Board, for example, and it then designates that as the person who's responsible there so that's the way the accountability goes?

Dr Gordon: It could be, that the person formally may have their job as 90% staff social worker, 10% "other capacity," so they are in some ways protected from someone coming and saying, "Hey, come on."

Mrs Boyd: We did that here with equity people, for example. They had to report directly to a deputy minister and that sort of thing.

In this whole issue of treatment, one issue that has raised real concern for people has been the issue of people being able to change location without explicit consent. I find that a really difficult one, particularly for geriatric patients who may not wish to move from one facility to another, and whether any move like that ought to be a special item of consent. Have you any comment on that?

Dr Gordon: Theoretically, I could see why you would. Practically, people get moved for lots of reasons. In our own organization, for example, we move between the facility, but each one is a different facility legislatively and corporately. I would hate to have to go and get consent to do it as opposed to having an understanding in the beginning that any place required to get the treatment that's agreed to—obviously, you try to communicate. We always call people, but a lot of times you can't get them. But you still have to do what you have to do. Sometimes it would come under emergency, so it's easy; sometimes it's not emergency in that sense but there are other reasons.

I'm not sure if I would like to frame it in terms of a consent, because that could be a barrier, but that doesn't take away the responsibility of communicating and understanding who and why you're doing these things.

Mrs Boyd: The other issue we've been struggling with is the issue of nutrition and hydration. Have you some advice for us as to how we can ensure that when it is appropriate medically to no longer offer by mouth food and hydration, that's possible, while at the same time ensuring that people are not disadvantaged by not being offered food and hydration?

Dr Gordon: I'll tell you, I just spent three days at a conference on clinical ethics. It is one of the most difficult, and part of it is a societal approach, and it

changes from one society to another; religious, all kinds of factors. Although I think it is accepted in North America and people can give directives to do that, we always have to counterbalance it, and for that I think there has to be a framework within every organization, even if it's on a consultative basis from somewhere else, to look at the ethical implications of the withdrawal. I'm not saying it can't be done, because I think there are circumstances where it can be done and perhaps should be done, certainly if somebody autonomously said they wanted it that way, but there should be a mechanism by which there is an external party. It could be from the institution, but external to that particular area, like an ethics consultant or a network, that at least can give some kind of perspective as to all the implications of it. We do it, even though in our organization it's even harder to do, but there is a framework by which we do it. It isn't just the doctor saying, "All right, pull out the tube," and it's over. It should be a very well-thought-out thing because the implications are so great.

The Chair: Thank you, Dr Gordon. I really thank you for assisting this committee today. We appreciate it.

Mrs Johns: Mr Chair, I just want a moment for a point of clarification on Mrs Boyd's question. I'm unsure whether she was talking about clause 11(b), but that doesn't entitle us to move the person, as a result of them being on a treatment, to another location. What that allows is that if they move to another location, it allows the treatment to follow the person.

Dr Gordon: Can I comment? That's very important.

Mrs Johns: I think so, too.

Dr Gordon: I must say that in my own experience—tragic—I've seen important treatment stopped because it didn't follow, even though one had hoped to write the orders but people weren't sure how valid they were. So that component of it is very important.

Thank you for the opportunity.

The Chair: I'd ask the committee to consider when we should meet on Monday. We have a lot of coordination to do of the various materials; we have a wealth of materials. I'd like your guidance this afternoon as to when we should initiate clause-by-cause on Monday. Thank you. We'll recess to 1 o'clock this afternoon.

The committee recessed from 1131 to 1305.

ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO

The Chair: Our next submission is from the Royal College of Dental Surgeons of Ontario. You have one half-hour, including any questions.

Dr Minna Stein: My name is Dr Minna Stein. I'm the deputy registrar of the Royal College of Dental Surgeons. The Royal College of Dental Surgeons, as you know, is the regulatory body for the dental profession in this province. We're charged with the responsibility of governing the dental profession in the public interest. With me today is Dr George Citrome, the president of the college and a practising dentist from Ottawa. Mr Alan Bromstein is the general legal counsel to the college.

We are pleased to have this opportunity to speak with you regarding Bill 19, the Health Care Consent Act. Prior to the proclamation of the Consent to Treatment Act, the

college made a number of submissions to the then standing committee on administration of justice, and while some of our concerns that we expressed at that time were incorporated into amendments to the legislation, many of the concerns we expressed were apparently ignored. Consequently, we are very pleased to see that the government proposes to replace the Consent to Treatment Act with this new legislation, legislation we believe is simpler and more workable to the health practitioners of Ontario.

Having said that, there are, however, three areas we would like to bring to your attention. We believe these three areas continue to create some concern and we would like to offer some modest amendments which we feel could rectify those concerns. So without any further ado, I'd like to turn the floor over to my colleague Dr Citrome.

Dr George Citrome: I'll speak to two areas of concern, firstly with respect to the presumption of capacity. The legislation appears to give a great deal of flexibility to the health practitioner in determining whether a person is mentally capable with regard to giving consent. The legislation, however, does provide that a person is presumed to be capable in all cases with respect to treatment, admission to a health care facility and a personal assistance plan.

This is of assistance to any health practitioner in circumstances where the person is of an age where one would expect them to be capable. On the other hand, this section also causes a young child to be presumed to be capable, thereby requiring the health practitioner to go through the various steps required before finding the young child to be mentally incapable of providing or refusing a valid consent. Our college therefore suggests that it is equally important to provide a presumption against capacity for young children.

In light of our concerns, we propose that the legislation be amended to presume capacity with regard to persons 16 years or older and to presume incapacity with regard to persons 11 and younger, and this would leave no presumption for those persons who are between the ages of 12 and 15.

The second concern I'd like to address is with respect to an obligation to advise patients of the opportunity to apply to the Consent and Capacity Board.

We understand that health practitioners are to hold off treatment of a person who the health practitioner finds is incapable with respect to the treatment where the health practitioner is informed that the person intends to apply to the Consent and Capacity Board for a review of the finding and so long as that application is not prohibited by subsection 30(2) of the legislation.

Unfortunately, we cannot find anything in the legislation to indicate whose responsibility it is to tell the patient of her or his rights to have that finding reviewed by the board.

We're aware that many health practitioners objected to the onerous provisions in the Consent to Treatment Act, 1991, where a health practitioner was required to provide this type of advice. None the less, if the proposed legislation is silent on the issue, we are advised that it is likely that a court would conclude that the health practitioner has a legal obligation to assist his or her patient by

at least advising the patient of the opportunity to apply to the board for review of the health practitioner's finding. To alleviate this uncertainty, the college would propose that a specific provision be included in the legislation setting out exactly what is required of the health practitioner.

Mr Alan Bromstein: I've been asked to speak to you in respect of the issue of informed consent. Let me preface my remarks by saying I'm not going to follow the script. The script is there for you to read at your leisure and to have your lawyers read, because it really raises a legal issue that we've attempted to be specific upon in the written form.

What I'm going to attempt to do today is to try and provide some education, and that may simply create more confusion because lawyers aren't very good educators, for those of you who may wish to understand that we believe there is a possibility, and perhaps even a probability, that this legislation will create some confusion in the law as it exists today. It's really our intention here to seek clarification and to bring this potential confusion to your attention so that you can take what steps you think are appropriate.

The area involved is really the one of civil liability. There is no issue—I'll use the royal "we"—we have no issue with the professional responsibilities of members of the profession of dentistry in obtaining an informed consent, and we very much like the fact that there is a list of the kinds of things that reasonable people would want to know about before making a decision on their treatment. That professional responsibility will be taken seriously by this college.

Having said that, however, we are a little confused about what the intended result was if one fails to get an informed consent, and whether or not it was the intention of the legislation draftspersons to change the law of informed consent, which some lawyers refer to as the law in *Riebl v Hughes*, a decision of the Supreme Court of Canada.

If I can explain briefly and in very simplistic terms what that case was about, a patient was suing because they had not been advised of material risk of treatment and the court found that they should have been advised of that risk in order to make an informed choice.

But the court went on to clarify and said two things. Firstly, they said the failure to advise a patient of material risk is an act of negligence, as distinct from an act which before that might have been considered a battery. So you understand the distinction, a battery is an intentional invasion of one's bodily security. The theory at that time was that if you did something without someone's consent, in other words, you picked them up of the street while they were asleep and you did something to them without any consent whatsoever, well, that's clearly a battery. You've invaded their bodily security.

But if they agreed to have some treatment with you and they gave you the agreement because they didn't understand all the issues involved in the treatment, then was that a battery? Did you invade their bodily security or were you simply negligent because you didn't get their informed consent? The court said, "This is an area for negligence."

The results of an action in negligence and an action in battery are very different and I won't go into detail, but they are different. One of the questions I ask and the college asks when we look at this legislation is: Are we going back to a situation where, if a member does not get an informed consent perhaps because they forget to tell of an alternative treatment—simply that, they forget to tell of an alternative treatment that the person should have known about—is that now a battery? I don't think that was the intention but it isn't clear that the law of *Riebl v Hughes* is to be maintained and it's still to be within the law of negligence.

That takes us to the second issue that was decided in *Riebl v Hughes*, and that is, what happens in a situation where the person wasn't told of a material risk, the material risk took place, but the court says, "If a reasonable person had been told of this risk, given the plaintiff's circumstances, they would have consented to the surgery anyway"? So they say it's a risk they should have been told of, because people making informed decisions should know about material risk—it could be a risk of death or paralysis—but the court finds that even had a reasonable person in this person's circumstances been told of that risk, they would have consented to the surgery.

It's not good enough for the patient to come forward now and say, "I wouldn't have had I known," because it's happened to them. So they use a reasonable person test in the patient's circumstances, and the court said that in that circumstance there's no liability.

When I look at the legislation you've proposed, there is a subtle difference between what you've proposed as to what is an informed consent and what the Supreme Court of Canada says is actionable as a failure to get informed consent. While it's subtle, I think it's distinctly different. You say, or the bill says, for a consent to be informed, in effect, a reasonable person in the same circumstances would require the information in order to make a decision about the treatment. There'll be many occasions where that's true, where someone may want to know that one of the alternatives to treatment might be a procedure that costs 20 times as much. They have a right to know that to make their decision. Maybe they want to mortgage their house to do that.

However, having found therefore that they are entitled to know that information, what happens if the individual, the practitioner, fails to give that information, but a reasonable person in that person's position wouldn't have adopted the alternative treatment anyway? The Supreme Court says there's no liability, and there's nothing in the legislation either adopting the Supreme Court's attitude towards informed consent or specifically indicating that it's changed. That's the confusion we think is raised.

What we're really saying is two things: One, are we going back to it being a battery if someone fails to do something small under this act, which in good faith the person should have done? It was a failure on their part. The person should have known about the alternatives. Is that a battery or are we in the law of negligence? We think that needs to be clarified. Secondly, is it really your intention to compensate people civilly or have courts

compensate them even in circumstances where the individual, had they known of the alternative or of the risk, a reasonable person in their situation would have consented to the treatment none the less? That's *Riebl v Hughes*.

We anticipated it was not your intention to do that and we provided an amendment. Far be it for us to say this is going to fit right into what you have today, but we have provided an amendment as a suggestion, if that is your intention, on the last page of our materials for your solicitors or legislative counsel to consider.

Mrs Caplan: You've raised a new issue or one that hasn't been before us before. I'm assuming I have a little bit of time.

The Chair: You have five minutes.

Mrs Caplan: Great. The first question I have is, was the Royal College of Dental Surgeons of Ontario consulted by the minister, either Health or the Attorney General, prior to the tabling of Bill 19?

Mr Bromstein: I can speak to this much: This issue was raised for the first time when we saw the Consent to Treatment Act, the issue of informed consent and the intent of that legislation. I think both legislations left open the same questions in our minds.

Mrs Caplan: Did you have an opportunity to see the legislation before it was tabled and to raise the concerns with the minister as part of a consultation prior to the tabling of the legislation?

Dr Stein: No.

Mrs Caplan: Okay, that's the first question. The second one or the point that I'll get into is I'll give you my interpretation, if I can, but more than that, some thinking on it, and maybe it will help you. I'd ask for clarification certainly from the ministries, because I think you do raise an interesting point.

I am a supporter of self-governance for the professions. I think you know that because of the role I had during the development of the regulated health professions legislation, and I've repeated that many times, but I think there are some issues that should be clarified and be up front in statute. Gilbert Sharpe, legal counsel for the Ministry of Health, will tell you that I've always argued that the issue of informed consent is one of those that should not be left without having that clarification in statute.

It's not in statute now. It's been left to common law. Your advice that we put something in here that would clarify it, I think, would give me comfort and clearly state the obligation, not on the basis of freedom from liability necessarily, but I think the obligation should be there so that it is the colleges who can lay out what is negligence.

I believe, by the way, that you can do it today. You can set out protocol for dentists and if they follow that protocol for obtaining consent, they could then argue, if they were challenged in a court, that they had met your standard and therefore it was neither negligence nor battery. If they had not met your standard, if your standard wasn't clear, then in fact it would be up to the courts to decide whether it was negligence or battery and, based on the Supreme Court decision, likely it would be negligence. I think that's the point you're making.

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Mr Bromstein: I think the only clarification I could make is that the law of battery will have nothing to do with the guidelines or even any legislation of colleges, because we can only legislate in the area of standards of practice. Battery is an intentional tort to the person. My concern is this may bring back the issue of whether it is a battery.

I agree with you that we can legislate what has to be given in so far as obtaining an informed consent, but as a matter of the most appropriate form, we like the list you have. Every person should have all those things given to them. The question then is, as a profession, we will tell the members of the college, "This is what you should be doing." We don't necessarily agree though, because an alternative form of treatment is not discussed, one that a reasonable person in that circumstance wouldn't have elected anyway, that it would constitute something actionable.

Mrs Caplan: My guess is that the courts would agree with you. If you got to that point and you were able to argue that, your members, if they had followed your protocols on getting consent, in fact would be okay. I think in these things you always want to err on the side of making sure that the patient is aware and does understand. I know that the ministries will take a look at what you've proposed, and during clause-by-clause, I'd like to have some discussion on that.

I have another question, and that is, do you believe that where the patient is incapable of consenting, because a dentist believes he's now dealing with an elderly patient—or never mind an elderly patient; it could be someone who perhaps is a little delusional who might qualify under the Mental Health Act on a form 1, that kind of thing, or of questionable competency—the dentist should have an obligation to communicate to that individual that he believes they are unable to fully understand and appreciate the consequences of the proposed treatment and that he's going to call in a substitute? Do you think that's a reasonable requirement for a professional?

Mr Bromstein: I think Dr Citrome has indicated in his presentation—he referred to an opinion and it is my opinion that a court is going to find that there is a relationship between that incapable patient and the practitioner, a relationship which requires more than simply saying, "I'll take my consent from A because I don't believe you're capable."

Mrs Caplan: Right. And in that case, this legislation now holds the practitioner free from any liability, even if they haven't communicated that fact and they have not communicated the individual's right to object to the finding or actually make application to the health consent board. Do you think there should be that freedom from liability, that it should be absolute, that there should be no accountability and nobody should have to be informed?

Mr Bromstein: I would tend to draw a distinction. I think the practitioner has a right to believe that they have an informed consent.

Mrs Caplan: That's if they're capable.

Mr Bromstein: No, an informed consent, if they obtain the consent from the individual who is properly a

substitute decision-maker as a different and distinct issue, I think, a court will say—and I'm just speculating as we have been in all of this—independent of this legislation: "You have certain duties to your patient. Your patient isn't the person who gave the consent; your patient is the incapable individual. What were those duties to that person?"

And to the extent that there now is some uncertainty of what the duty is, we think there should be some greater certainty of what the practitioner's obligation is, even if it is simply to advise of the existence of a board and the rights of the person to challenge the decision.

Having said that, we raised it in our written materials saying that's something to be considered. Certainty is better than uncertainty.

Mrs Caplan: I agree with you, and I believe that certainty is good whether the patient is capable or incapable.

Mrs Boyd: It seemed to me that we kind of got a little bit confused between the disclosure that is implied by informed consent, and the issue around informing the person that they're incapable, and the issue of the ability to appeal. At least, I got confused. I don't know about you.

The suggested change that you're making here only applies to the informed consent situation. In other words, that's the issue that you have with the suggestion that you've got to section 27.

Mr Bromstein: The one that I've spoken of deals only with civil liability, correct.

Mrs Boyd: I assume, because you've given it in the way that you have, that you would want it sort of reworded to fit 27(1), 27(2), 27(3), 27(4) and 27(5).

Mr Bromstein: It has to be blended in.

Mrs Boyd: All of those sections, so it would be 27(1) and the subsequent sections in the same way. That's what you're suggesting.

Mr Bromstein: It was our intention simply to bring to your attention the issue and then your draftspeople would, if you agree with the principle, blend it into the legislation.

Mrs Boyd: So that the withholding of treatment would be subject to the same kind of thing, because this has been one of the issues. The act permits the giving of treatment, but it also permits the withholding of treatment. You would want it to apply to both of those.

Mr Bromstein: I'd have to consider that, because I don't want to answer quickly and misunderstand the point.

Mrs Boyd: Okay. Subsection 27(1) talks about actually administering a treatment. Subsection 27(2) says,

"(2) If a treatment is not administered to a person because of a refusal that a health" care professional "believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this act, the health" professional "is not liable for failing to administer the treatment."

In other words, I would assume that you would want to be in the same situation as a physician around not administering a treatment if you understood that the refusal was according to the act.

Mr Bromstein: In fairness, that was not the intent of what we put forward, to be fair, and we didn't consider

that. But the intent was really dealing with not changing the law of Riebl and Hughes on informed consent, not on withholding. We were not attempting to address the withholding of treatment.

Mrs Boyd: So we need to understand that your suggestion is only about subsection 27(1).

Mr Bromstein: As it relates to informed consent.

Mrs Boyd: As it relates to informed consent.

Mr Bromstein: Correct.

Mrs Boyd: And possibly subsection 27(4) which is again about the administration of a treatment.

Mr Bromstein: And (3) also I think deals with consent, right.

Mrs Boyd: And (3) also, okay. Just so that we can be clear—because as we start to go through clause-by-clause, we just need to be really clear. I would have assumed, since you just said section 27, that you meant it to refer to all, and you're not at that point, so we just needed to know that. I don't mean to belabour it.

On the other issue, you are basing all this on this notion of presumption of capacity, and that's really important, isn't it? Certainly from the gerontologists who have come in front of us talking about the difficulties that you and they experience around dental care for seniors—for example, they would probably agree with you that it's very important that there be a provision here that enables a plan of treatment to cover dental care if that has been the norm in that person's life.

We heard the physician, Dr Gordon, from Baycrest this morning talking about the importance of that in terms of sort of judging implied consent and you would agree with that? Is that where you've run into most of the difficulties?

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Dr Citrome: No. We would run into the difficulties with children, the other way. It would be cumbersome to lay out all the—for lack of a better word—rigamarole to get valid consent when they can't understand.

Mrs Boyd: I hope you'll forgive me if I disagree with you. I believe that children also ought to be presumed to be capable. Certainly, that would differ from age to age for a child.

Mr Bromstein: We were never married to any particular age group, but the fact is, I think I can present some age of some children, three, four, where you would say the presumption really should be that they are not capable, for almost any—I can't think of a treatment they'd be capable for. We were simply saying, if you presume capability for certain age groups, it seems to us that you may wish to presume incapability for certain age groups and everyone in between really is where you focus, because some children, by virtue of their tender years, could not be capable.

Mrs Caplan: That's a question of judgement.

Mrs Boyd: Yes.

Mr Bromstein: No, but you have a piece of legislation that says they are presumed capable.

Mrs Boyd: In front of the courts, we listen to children who want to testify about victimization who often are three or four years old. The presumption of incapacity has a lot of implications if we go that route, and I think that's one of the reasons why, as far as I can tell from the

discussion, there's no disagreement of us on this side of the table with the government's position that there should be a presumption of capacity for all age groups. And you need to know that it goes further than just health consent. As soon as you start defining those ages, you get into some pretty muddy waters around the capacity of children to do other things.

Mr Parker: Thank you very much for your presentation this afternoon. I'm pleased to note that by and large you register approval and support of this bill, but you have raised a few very precise points and some in areas that are quite technical, I would suggest.

Let me see if I can address each one of them. Actually, frankly, I would endorse the comments made by Mrs Boyd as to the age of consent. We have the same difficulty that she's outlined, if for no other reason than—your suggestion, frankly, just introduces another layer of inquiry that the decision-maker must make before deciding on whether we're dealing with capacity or not. You have to pull out birth certificates or something to figure out just how old this person is, and the approach that we've tended to take in this legislation is that each case will be decided on its own merits and the person on the scene and making the decision is the one best able to make the decision that has to be made.

Obviously, if you're dealing with a babe in arms, it's pretty quick to overcome the presumption that the statute has, but it's kind of hard to come up with a precise age at which the presumption should flip from one to the other, we are suggesting. Our approach has been to leave it to the decision-maker on the spot to assess each situation as it comes before them.

But just dealing with your other points, briefly, Riebl and Hughes—you're the first one to mention Riebl and Hughes before this committee.

Mr Bromstein: We may have been the only one on the last occasion.

Mr Parker: Well, we've only got one afternoon left. I'm not aware of any motivation on the part of any of the draftsmen to overcome the rule in Riebl and Hughes by means of this statute. Frankly, I don't think we have done that, but your point is one that merits attention, and I'm anxious to see to it that we ensure that your point is—

Mr Bromstein: I think the intention is, we didn't think you intended to, our concern is that it's happened. If it wasn't intended, it can clearly be identified that it wasn't by putting something in to make it certain that it hasn't been changed.

Mr Parker: We just want to make sure that by doing that, we haven't opened up another can of worms that causes us more trouble.

Mr Bromstein: Absolutely.

Mr Parker: So it's a point that you raised quite correctly, and I am anxious that we satisfy ourselves that we've addressed it adequately.

Your particular recommendation on page 6 of your paper—I'm going to suggest to you that we've done pretty much as good a job as we could be expected to do, by virtue of sections 10 and 19 when you put them together. I don't know if we want to override that with some sort of a general reasonable man test, given the quite elaborate structure that we've already put in place

here, to try to ensure that we've got informed consent or where there is a lack of capacity the decision made is made according to the appropriate criteria to the case. I just direct you to those sections for how we think we have addressed the issue you've raised.

Your other point—you were asking for some direction in the legislation; I'm looking at the bottom of page 4—is that a specific provision be included in the legislation setting out exactly what is required of the health practitioner in matters of advice and so on. Frankly, you're the first professional body to request that. By and large, the recommendation we have received is to get the statute out of the faces of the professionals and to not give in to the urge to micromanage the professional judgement of people who are applying these principles in daily practice, that this is a matter best left not to a bunch of politicians sitting around in a Legislature but to professionals and professional colleges and that level of detail and that level of familiarity with the issues. I'm just interested in your further comments on that point.

Mr Bromstein: I can tell you that the college has had a lot of discussion on this and we're not seeking to micromanage through statute either. One of the changes from the previous legislation, which I think did that, was certainly appreciated by this college because we don't think our members could have managed the legislation, to be honest.

Having said that, however, we thought it appropriate to bring to your attention that, whether you put it in your statute or not, we don't think courts are going to ignore the fiduciary relationship between patient and physician, patient and practitioner, patient and dentist in the responsibility to do something for that person you find incapable.

As a matter of certainty, the college's preference would be to have, and this is simply a suggestion, a form prescribed in the regulations, which would be given to an individual and which would be simple and would be acceptable as a basic level of information. That would be something we would look favourably on, so that it would at least fulfil a minimum requirement. If not, it leaves it to the colleges, I think, to provide information to their members as to what they think the obligations of each member are in discussing with the incapable person their determination that they are incapable.

The Chair: Thank you, Mr Parker, for your attendance and your presentation here today.

MARILYN O'CONNOR
DIANNE STONE

The Chair: Our next submission is by Marilyn O'Connor and Dianne Stone. Welcome to the deliberations of the standing committee on administration of justice. If you would, proceed.

Ms Marilyn O'Connor: Good afternoon. My name is Marilyn O'Connor and I'm a rights adviser. Dianne Stone is my co-worker and she's also a rights adviser. We're not here today on behalf of the Advocacy Commission, we're here as individuals. We wanted to take the opportunity to share with you some of the experiences we've had in working with this legislation on a day-to-day basis. Dianne is going to start.

Ms Dianne Stone: Since April 3, 1995, the Advocacy Commission has been responsible for providing rights advice under the Consent to Treatment Act, the Substitute Decisions Act and the Mental Health Act across the province, with the exception of the 10 provincial psychiatric hospitals. Our rights advice team is made up of a centralized intake and referral unit and the community rights advisers. Originally the demand for rights advice wasn't known and we began with 39 rights advisers. Today there are 20 rights advisers across the province, working out of our homes at an hourly rate of \$18.50.

We were hired based on our academic, professional and volunteer backgrounds as well as our ability to relate to vulnerable people. We received two and a half weeks of intense training and we were required to achieve at least 75% on three stringent exams in order to be authorized to provide rights advice.

Our intake and referral unit receives calls 24 hours a day, seven days a week, through a toll-free line. They are able to provide information and referrals to community services, government agencies and advocacy groups, using a database that contains a directory of services available in all parts of the province.

They also receive requests for rights advice from medical staff, lawyers and assessors. They input the request and assign a rights adviser. They track the request from initial call to file closure, to ensure time lines are met and rights advice is provided. Centralized intake and referral provides a streamlined and efficient service.

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Each client we meet with is different, and so each rights advice visit is different. It's difficult for us to give a general description of what we do. We meet with clients wherever they are, whether that be in a community hospital, in a long-term-care facility, in the client's home or even sometimes on the streets. Our goal is to provide our clients with the information they need to make informed decisions, and we're sensitive to each client's needs. We use the services of cultural interpreting or alternative communication if needed.

We explain to clients the situation they're in, its impact and the options the person has to deal with the situation. The options we present can include doing nothing, discussing it with the doctor or applying for a hearing with the Consent and Capacity Review Board. Under the Substitute Decisions Act, the option can also include appearing in court. If the client chooses to apply for a hearing, we follow through with that request.

We act as a liaison to the client and counsel and provide information to medical staff and families when the client requests. We encourage communication between clients, medical staff, family and service providers. Clients often have other concerns, and because we're in the communities we serve, we're able to provide them with information on services and how they can access them.

Rights advisers are not advocates. We don't tell clients what to do and we don't make decisions for them. We don't have access to clinical or personal records and we don't consult on treatments. Rights advisers do not delay treatment to the detriment of a person's health. In general hospitals rights advice is only required if the person

requests it. It's our policy to respond promptly to these calls. In fact I was involved in a rights advice request recently where I arrived on the ward before the patient did. These types of requests represent less than 5% of all of the rights advice visits that we do.

We believe that rights advice is necessary, and our experience confirms this. We make decisions about our lives every day: where we live, what we eat, what activities we're involved in, how we spend our money, what's done to our body. Sometimes our decisions are questioned, but it's assumed that we understand the consequences and that we do have the right to decide. Sometimes people are not able to understand the consequences of their decisions, and society has a duty to protect these people from harm.

The law gives certain professionals, like doctors and assessors, the authority to suspend the right to make certain decisions if they feel a person's not capable. But determining capacity is not an exact science. There's no reliable and valid tool to measure competence. It's a very subjective process. We've seen many findings of incapacity that were questionable. For example, a rights adviser in the east region met with a gentleman who was found to be incapable. It turned out that the man was hearing-impaired and the people responsible for the assessment didn't know that.

The result of a finding of incapacity is a very serious matter. Due process must be followed. That includes letting the person know that they've been found incapable and why, the impact that this will have, and ensuring that they have access to legal recourse. The person has the right to not merely be told or served written notice but to understand.

We don't believe that rights advice can be provided adequately by medical or hospital staff or by employees of the public guardian and trustee. It's essential that it be provided independently from the authority that is seeking to remove or to assume decision-making authority.

Ms O'Connor: We know you've heard from a lot of lawyers and there's been a lot of discussion on charter issues. We really don't want to get into that because we're not lawyers. What we wanted to do was to bring to your attention from our experiences some of the practical things that you may not have considered.

Often, particularly under the Mental Health Act, when we meet with clients we spend the first period of time convincing them that we're not in any way affiliated with the hospital. It's a real concern to them. You have to realize that when you're being held involuntarily and when people at the hospital have the right to let you use the phone or not, get dressed or not, you feel in a pretty powerless situation. So we wanted you to know that's something that might be problematic if you have hospital staff, whether it's nurses or people from administration, that you may run into some problems with the patients feeling that they're really not getting a fair shake.

Another point that's quite practical is the time involved. There have been a lot of questions from people around this table about, "What do you do as a rights adviser? How much time does it take?" The time involved in an interview can vary. It could be 20 minutes or it could be two hours. If there's a review board request,

which happens in approximately 30% of our cases, you can probably add another six to seven hours of work to that, because you're involved in retaining counsel and ensuring legal aid applications are filed. If there's property involved, you may be involved in ensuring that mortgages and deeds are available to legal aid. You'll be consulting with counsel, sometimes with medical staff, the public guardian and trustee's office and the courts.

We submit that if someone is working in the admin office with a full-time job and there are approximately 10 involuntaries in that hospital that week, and even three of them go to review board, they could in fact look at 30 to 40 hours of extra work on top of their regular job. We thought you might want to have an idea of what actually is involved with this before you make any final decision.

One issue that's come up with rights advisers all over the province has to do with seniors. Something that we've seen that's given us cause for a great deal of concern is admissions to long-term-care facilities. Often what we see is that it isn't really a question of the person's capacity so much as a difference of opinion. If you look at page 5, there's a short little story that we think outlines that fairly clearly. It's at the bottom of the page and it goes through a situation that a rights adviser ran into involving a 92-year-old man.

No one is trying to say that the health care practitioners in this area meant any harm or had any malice, but when you look at someone's capacity it's so subjective. In this case they really thought that this gentleman was doing too much by walking two miles a day and keeping a big garden. But if you were to ask me, I'd say, "Gee, I hope I'm so lucky when I'm 92 years old."

That's why we think in this particular situation it's really important that these people have access to independent rights advice and to the review board, because what happens here could possibly affect where that person spends the rest of their life. It should be also noted that most seniors who are going to review board on these issues and are heard are successful and do return to their own homes.

The last thing I want to bring up is education. Because we've had the practical experience of being out in the field from day one dealing with this package, it became pretty clear to us early on that the health care practitioners and the public did not have very clear information about this legislation. When we were going out into hospitals and nursing homes, immediately we had the practitioners, nurses coming up to us and asking to explain to them what the legislation said.

We'd frequently refer them to the manual that was produced by the colleges. In hospitals we'd refer to the manual produced by the hospital association. What we found was that often doctors might say, "Yes, I probably did get that but I never got a chance to read it, so can you just explain it to me?" Or you'd go into a hospital and they'd say, "Manual? Is there a manual?" and we'd be giving them the address where they could send away for the manual.

We're not trying to criticize the colleges but we just want you to know that the last time it didn't seem to work very well, the route that was taken, which was to let the colleges handle the education, and you might want to consider those things when you're looking at educa-

tion. We would suggest that you take responsibility to make sure that the health practitioners and the general public actually do have a good understanding of the new package. Otherwise we could run into more tragic situations like Lonnie Clemens.

In conclusion, we really do believe that independent rights advice is important and essential in a democratic society and we believe that there must be some type of delivery system that could be brought in that would be financially responsible.

We have three recommendations:

(1) That the right to know and receive rights advice be restored for findings of incapacity to consent to treatment and findings of incapacity to consent to admission to a long-term-care facility.

(2) Provide a service delivery system for the provision of rights advice that is independent from anyone with authority to make a finding of incapacity or anyone seeking to assume a decision-making authority.

(3) That a reasonable time and sufficient resources be provided by the government to ensure adequate orientation and education to health care practitioners, facilities and the general public.

That's all we have. We wanted to leave time for questions.

Mrs Boyd: Thank you very much for coming and telling us a bit about your experience with the act. One of the things I'm curious about is the extent to which you felt there was hostility to rights advisers on the part of the health professionals or whether your sense was that health professionals were really just boggled by this whole process and finding it difficult to cope? Or was it really hostility to the notion that anyone else might intervene?

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Ms O'Connor: I think we're very proud of the work we've done. Initially, yes, when we first went out there was suspicion. I wouldn't go as far as to call it hostility—we were dealing with professionals—but certainly there was concern and suspicion, and what we have found in the physicians and the nurses in health care facilities that we've dealt with, is that within about three months we'd turned that around 180 degrees. In fact, the health care practitioners that we deal with give us nothing but praise and tell us that we're giving them a great service, so we're very proud of that.

Mrs Boyd: You see, that was the experience when the Psychiatric Patient Advocate Office first opened too. There was a whole lot of initial worry, and a lot depended on the personality and the approach of the individual advisers who were involved, but I think a lot of that apprehension disappeared fairly quickly when people saw how this actually worked in practice and what happened.

I guess one of the things that concerns us is that we've seen a real dichotomy, for the most part—not entirely—between health care professionals of all colleges really expressing concerns about whether it is their job to give rights advice, and yet feeling that there's interference if someone else gives rights advice, and the consumers being virtually unanimous in saying that they need that kind of support in order to ensure that their rights are followed. Does that surprise you?

Ms O'Connor: I guess what surprises us is, we've been watching the hearings in the evenings and we have heard the colleges speak, and there's a real difference between what the colleges are presenting and what we hear out in the field. Every day that I go out now, doctors are coming up to us and saying: "You're not leaving, are you? What are we going to do without you?" So we go out and hear this from the people that we actually work with and then we hear the college presenting the way it does. I think you're better off to talk to the people who actually work with the legislation and with the people. It's easy when you sit in a big office in Toronto to make assumptions but not actually have any real experience to base them on.

Mrs Boyd: We've heard a lot of talk about this Mirandizing situation and reading out the form and that sort of thing, and I think all of us feel that there's no question the way that all was handled, as though it was a requirement, very similar to police officers, was offensive to everybody, whether it was consumers or providers and so on.

So we're not unhappy about seeing some different way in which that can be done, but it's very hard to try and determine how we can be sure that the consumer is actually getting what they need when you see this reluctance on the part of the governing body, particularly the college of physicians. We didn't hear that from the College of Nurses, for example, although we did hear their assumption being that all nurses would do that anyway and certainly hearing from consumers that that's not the case.

Ms O'Connor: Certainly under the Mental Health Act it's required that there be service of a particular form on someone who's being held involuntarily, and our experience is that about 50% of the time that takes place. So if you look at that issue—and it takes—what?—a minute to hand somebody a form—if you're going to depend on somebody to give rights advice when 50% of the time they don't even give out the notice, I think we're going to be into some real problems.

Mrs Boyd: Yes, and the vast majority of cases have been under the Mental Health Act.

Ms O'Connor: Almost 80% of the cases that we have dealt with have been under the Mental Health Act, and as we say, under the Consent to Treatment Act it's been just under 5%. In fact, the majority of the cases that we've seen under the Consent to Treatment Act either are in a psychiatric facility or are on these long-term-care admissions. Medical treatments have consisted of probably less than 2% of our work.

Mr Parker: Thank you very much for appearing this afternoon and speaking so effectively and eloquently on behalf of your recommendations.

If I might, I'd like to take off my government hat for a moment and just ask some questions as a private MPP. You have spoken quite eloquently on your view of the need for independent rights advisers in the model that you have recommended before us. Can you think of any other model that might be acceptable, that might be workable? I'll give you an example that's just sort of floating around in the back of my mind.

I come from East York, where we have Toronto East General Hospital, and Toronto East General has an

ombudsman on staff who's independent of the hospital structure but is there to do many of the things that I hear you describe that a rights adviser might do. Now, that ombudsman has a business card that identifies her as in some way being associated with the hospital, but she acts quite independently of the hospital administration and does what you would expect an ombudsman to do. Is that sort of model acceptable to you in any way? Do you see that as something that we could work with?

Ms O'Connor: I think the only problem there is, if you have the same employer, that is, the same person paying the salary, that would be the problem. If you could have it set up in a way that they were independent in terms of they're not on the hospital's payroll, something like that where you had an ombudsman-type service might work. But I think it's important that they're not on the same payroll as the doctors and nurses and the staff of the hospital, because our experience, as I said, is that so frequently the first thing we do when we get there is convince the person, before they'll even talk to us and feel any trust in us, and to say, "No, we come from out here; we're not part of the hospital," because they are being detained against their will and all of these other issues come in.

A gentleman spoke actually to this committee, and I'm not sure it was the same members. It was a Mr George Mainer on February 7. I think that might give you an indication, if you remember that, of the degree of distrust some patients feel towards the hospital or anyone who's on that staff. So that was the point we really wanted to make clear.

Mr Parker: I don't think any of us is likely to forget the testimony of Mr Mainer. My friend has a question.

Mr Fox: Are you people ever in a position where you have to overrule someone who has the consent for these people?

Ms O'Connor: No. A rights adviser under absolutely no conditions makes decisions on behalf of anyone. Our role is to give the information and to assist the client at their direction. We make no decisions.

Mr Fox: So how do you find out about who needs this assistance?

Ms O'Connor: Through our intake and referral service. The calls are filtered through the 800 line. Either they come in by fax or by phone from facilities all over the province. There are about five people in this room and they take in the calls. We have beepers. When a call comes in in our area, we're beeped and we take the information. Then we go out and do the call. We work out of our home. Our offices are set up in our own home. We work out of a briefcase and we have a beeper and we travel around the geographic area that we cover, taking care of the rights advice calls that come our way.

Mr Fox: I kind of question the fact that you only have two and a half weeks of training, because you are taking a fair responsibility here for someone's life that you really don't know much about.

Ms O'Connor: The training that we had was on specifically the legislation. It's our responsibility to understand what the process is and what the person's rights are. We don't make any decisions. We don't in any way attempt to influence anyone to go to review board or

not to go to review board. All we do is go in and present the facts that the finding's been made, in commonsense language so that they can understand what that actually means. You know, "You're involuntarily detained." That means they can't leave the hospital. We put it in plain language so they understand, and then we present the options. If they give us direction, we follow their direction. If they say, "We're happy," we say, "Fine, we're out of here."

Mr Ramsay: Thank you very much for your presentation. We certainly have no argument with your first recommendation. We really do agree that it's important that the person who's been deemed incapable has the right to know and is given rights advice. What we're still trying to grapple with is what mechanism should be employed in the bill to make that happen.

There would be several different options. Obviously, we want to make sure that one way to do it would be that it would be duly noted and possibly witnessed that it was given. Another way might be to have incentives in the legislation so that there would be no liability protection if rights advice was not given. There are other options. I guess what I'd like to have from you today is maybe another opportunity from you to present your case of why you so firmly believe it really has to be from an absolutely independent individual to give that advice.

Ms Stone: I think one of the most important factors to consider there is that the people we see want it to be from an independent source. They don't hear the same information from the person who says they're incapable as they do from an independent source.

Marilyn talked about how patients who are involuntarily admitted to hospitals feel pressured by doctors. Doctors have the authority to give them privileges to leave the ward, to use the phone. They're afraid to challenge a doctor to his face, that he could take away their privileges. It needs to be coming from an independent source.

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Also, when we present information to clients, we do it in a very non-biased manner. We give them factual information. It would be easier for a health care facility that's in the business of protecting the client, that's in the business of looking after their best interests, to present that in a more biased manner. It would be difficult for them not to present it in a biased manner. If I decide somebody's not capable, it would be difficult for me to give them information as if they were capable. Marilyn?

Ms O'Connor: Yes. I agree with what she's saying. I think it's very difficult to put yourself in the position when you're, for example, making a decision that someone's not capable, to then give them objective information on how they can go and argue against what you're saying. Remember, if it's the doctor, it's going to be the same person who's going to be testifying against you at the hearing. So that's kind of a strange situation to be in, to be receiving information about your rights from the person who has taken them away and who's going to testify against you. I think that would be sort of an unusual way to look at it in terms of being fair.

But also, in terms of time, there's no accountability. As we tried to explain, rights advice isn't just a five-minute

little deal where you walk in and say this information. There can be two hours involved in an interview and a great deal of paperwork. If someone is involved at the hospital, they may not have a lot of motivation to not discourage someone to go to a hearing, because it's going to mean a great deal of work for them.

The Chair: Thank you for your presentation.

Mrs Boyd: Just as a point of information, Mr Chair, I understand that the Whitney Block has been evacuated because of a gas leak and that may effect the provision by legislative counsel of the amendments for all of us because it's the legislative counsel that's over there. If that should happen, I think we need to be aware of what's going on during the afternoon. It may prevent all of us from getting our amendments in this afternoon and we might have to do it tomorrow morning. I just wanted everybody to be aware of it as soon as they could because apparently they don't know whether they will be able to go back to their offices.

The Chair: Thank you, Mrs Boyd. The clerk will get in touch with legislative counsel and try to get us an update. Mr Ramsey doesn't have a canary with him or anything like that, does he?

Mr Ramsay: No, I left my bird at home.

NATIONAL TRUST

The Chair: Our next submission is from the National Trust, Mr Glenn Davis.

Mr Glenn Davis: Hello again, Mr Chairman. I was getting a little concerned there when I heard about the natural disaster following me wherever I go. I take it by now you are all satiated or soaked, at least, in the nuances of this legislation, so I'll be a little briefer on some of the things I had to say when I was first here and I'll amplify other areas which have had a chance to gel.

I started off the last time I was here by mentioning that trust companies in general—our company is merely one of several—deal with vulnerable and incapable people in many different ways. Many of them are depositors with us in our retail branch, so we have a lot of activity with families and with powers of attorney in our branch system. Secondly, we are a creditor and mortgage lender to people who lose their capacity to manage their affairs. Thirdly and most importantly from my perspective because I work in the trust department, we act as power of attorney for individuals; we act as guardian of property, or formerly as committee of property, for individuals; we act of course as trustee and executor of their estates when they ultimately pass away. We also manage individuals' affairs while they have all of their faculties, for whatever reason; if they choose to have us be a portfolio manager, we carry that function out.

One of my themes that I want to leave with the standing committee is that perhaps because these functions of a trust company and the trust industry are not well known, there's remarkably little reference to trust corporations in the legislation. One of the themes I want to establish is that trust companies should be treated differently than lay persons, if I can call them that, because many of the concerns about protection of the incapable or the vulnerable person from other individuals are not there when you have a trust company on the scene.

We are all aware of situations, I think, where a family member has abused the finances of somebody for whom they hold power of attorney, and of course a lot of the protective devices are designed to prevent that prospectively, make it visible while it's happening and provide mechanisms to fix it after the fact.

Where a power of attorney, for example, has been given to a trust company, it is the trust company, the corporate entity, that has the discretion to act; not the employee administering the account, not the branch teller, not the branch manager—the corporation. We are required, for example, by the Loan and Trust Corporations Act to have in writing policies delegating from the board of directors to management how discretionary decisions are taken. The one thing the trust industry is good at is writing policy and procedure, how we look after people's money; we've been doing this for over 100 years. So to me, for example, it makes no sense that if we have a power of attorney and we're running somebody's affairs and they become assessed as incapable, all of a sudden all those arrangements are crashed. It just doesn't make any sense to me.

I can understand the desire to have a public office second-guess the appointment of a family member, because family members go through changes, sometimes catastrophic changes—marital breakdowns, substance abuse, geographic relocation, mental health problems or physical health problems of their own—that might make them unsuitable. Corporate entities of course don't, so they should be treated differently on a policy basis.

Even in the case where corporate entities have merged or amalgamated—I'm thinking of the Crown Trust situation, for example—nothing has happened to the trust accounts. They've been transferred to another trust company to be administered on an agency basis, so the clients' money and property don't go awry.

In the last year or two, especially with the increased pressures on the public guardian and trustee's office, we have experienced a very sensible, practical approach, in that people who want to dump their problems on the public guardian and trustee's office are encouraged to go back to private industry if they have the means to pay for it. Why should the public office take on these accounts if they can afford to have somebody do it for them? I think that's a sensible theme in today's government period of restraint, and that kind of practical thing can be enhanced through the wording of the legislation.

Very recently, something came up that gave me great concern so I dwell on it perhaps a little too much in this submission, but it's very common in our industry that we are given an executor appointment and at the same time we get a power of attorney from the client to be used if, as and when they become incapable.

Recently, it was suggested to me that those powers of attorney are invalid because employees of the trust company have witnessed them, and this has given me a bit of paranoia. I know there has been great interest in the prohibited classes of witnesses to powers of attorney: What's the definition of a spouse? Is a brother or a sister not an eligible witness?—those sorts of things.

I don't read the legislation as prohibiting an employee of the attorney from witnessing because I draw a distinc-

tion in my mind between the employee and the attorney, as I've said. However, I can assure you it would create havoc if we had even one court case where a power of attorney to a trust company was found to be invalid because an employee of the company had witnessed it, or two employees of the company as the case may be.

Many, many of our clients have chosen the trust company, the trust industry, because they have nobody in terms of friends or relatives they want to burden with it or nobody who is capable or nobody they trust. Any risk to that arrangement is doing an enormous disservice to those members of the public, and we have hundreds, if not thousands, of those sorts of attorneys in place.

If you could find time in your busy schedules to slip in some kind of qualifier or a statement that nothing in this legislation would mean an employee of an attorney could not be the witness, that would be enormously appreciated by our industry.

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Most of you will be through your own affairs that you can name the executor and trustee in your will. You can select the person who is going to run your affairs when you die. If you haven't given a power of attorney, you do not, apparently, have the same right to name the person who's going to run your affairs if you become incapable. This, to me, seems a curious gap in our law and in our abilities to exercise personal freedom.

I have talked to trust company clients who would say: "I don't feel like giving anybody power of attorney, quite frankly. I don't trust anybody to have that sort of unregulated power. But if something did happen to me, Mr Davis, I would want the trust company to be put in charge of my affairs and run my affairs because then they'd be under the supervision of the court, effectively."

But I know of no way presently to make that happen. If we wait until the client loses their capacity, the trust company is nowhere on the list of prospective guardians; we're way down the line. Usually, if we're going to court, we'd have to satisfy the judge that we've asked everybody else and they've all agreed they don't want to do it. Of course, that's time-, energy- and money-consuming and is often not justified.

Again I'd suggest that when you're putting your statutory hats on, you create a new category of possible guardians, that is, simply someone who has been appointed by the client prospectively. It doesn't have to be a trust company, of course. This could apply equally to individuals. But it would be a new category of possible guardians and an expansion of the right to choose.

There is reference to appointing a trust company if the spouse consents, and this is something that I think bears contemplation. Oftentimes the mythological happy nuclear family does not exist, and in cases where impartiality and advocacy on behalf of the incapable person is most important, that's when you're least likely to get the spouse's consent. It's the spouse, often, that the vulnerable person has to be protected from.

If you view a trust corporation as virtually the equivalent to the PGT, as I do, because they are basically incorruptible, professional and experienced, it makes sense to me that you would not want to give the spouse the right to keep that sort of impartial person out of the client's affairs.

I'm not sure exactly how you deal with legitimate family concerns about retaining control and those sorts of things, but it's a little too strong to say the possible exploiter controls the appointment of the protector.

One other clarification that again would help and that I don't think, with all respect, was in the mind of the drafters when the legislation went through: The trust companies fulfil so many different roles with incapable people that I'm concerned we fall into the category of "service providers." We often wind up not only as the landlord of an individual but as the employer of their nurses, housekeepers, gardeners, chauffeurs, directors/officers of their companies, lawyers, accountants. We virtually are their substitute decision-maker for every conceivable role except health care. If we are in those roles, if we are a service provider, there's this conflict issue that's worried about.

Again, I think the solution goes back to recognizing that, with few exceptions, trust companies are not persons, and if you tinker with the definition sections, you may be able to make it clear that it's not a conflict.

In the last few weeks, other issues that I haven't expounded on in writing have cropped up that are germane of wide application and not limited to the trust industry, and do raise great concerns on a policy level and are therefore worthy of perhaps putting back into the statutory mill or the regulation mill.

The first item is that of compensation. There is a regulation now which prescribes the presumed compensation for guardians. I believe it was intended to reflect the practice in trust-type estates with which we are very familiar, namely, a percentage of value of assets on receipt and distribution or disbursement. However, when we actually went to apply these rates to a few situations, we found out that it wasn't clear enough, if I can put it that way.

For example, if one of you individuals were rendered incapable and it was decided that we should apply to be put in charge of your affairs, we might have to go out and collect a large quantity of stocks and bonds and investments, mortgages perhaps, mutual funds, GICs. Strictly speaking, we would be paid nothing for doing all that work because that is not a "receipt" in the context of estate administration. In the normal post-mortem situation, a receipt is coupled with the word "realization," which usually means sale. The traditional way we run a trust estate, at least at our company, is that when we sell something, then we get 2.5%.

Similarly, when the client has made a will and there's a distribution to beneficiaries, that's when we get paid, on a distribution. In our internal discussions, we've contrasted that with the fact that the incapable person has died and we are turning the assets over to the executor. That's not a distribution in our lingo, and accordingly it's arguable that we would not be entitled to any payment for doing all that work.

That doesn't make sense on a business basis. I don't know if that was what was intended. If the government of the day is going to venture into trying to clear this stuff up by regulation, I guess on reflection we need a little more detail. It would probably be helpful.

The same thing applies of course to lay guardians, who have no experience in this. If they opt to accept compen-

sation, they are held to a higher standard of care, which is logical and proper, in my view, but a little clearer how-to manual would probably be helpful.

The second related issue that has cropped up and that we focused on a quite a bit is that of fiduciary investments. I hope when you get to your line-by-line analysis, you'll have a chance for some more input from the PGT. Mutual funds in particular are an extremely common investment these days for everybody, including people who subsequently become incapable. From a trust lawyer's perspective and I think from the PGT's perspective and from recent case law perspective, mutual funds involve a delegation of decision-making about investments. The investor has turned the investment decision-making over to the fund manager, which is prudent, reasonable and a good thing in many, many cases, but from a trust law perspective it involves an unacceptable abdication of control.

On a policy basis, I don't think personally that the SDA goes far enough by exempting investment from trustee act restrictions. You need to grapple with the issue of whether you want to sanctify this abdication; otherwise, I think—correct me if I'm wrong—you're forcing the PGT to get into reviewing and perhaps even objecting to guardians maintaining mutual funds as an investment, which would have a huge impact on the average lay individual. That's open to a policy interpretation in their office of course.

We have the same problem. When we become a guardian and we're trying to assemble a management plan for our new client, we're very sensitive to what the judges say about abdication of fiduciary responsibility. Does that mean we should be proposing to sell these mutual funds? It brings the whole issue back up for reinvestigation.

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This, as I say, very recently has become a hot issue again and there's quite a wide variety of opinion about it. For example, the other side of the argument is that trust law is supposed to encourage trustees to do what reasonable business people do and reasonable business people do invest in mutual funds and therefore, it's not a violation of a reasonable business person standard.

However, we do have several recent very troubling case decisions, some of them involving trust companies and, given what might fairly be called judicial conservatism on these things, it wouldn't hurt if you can pin it down by statute.

Number 3 in penultimate points here, the interrelationship between compensation and trustee investing is a very sensitive issue. In large estates, for example, the courts have often permitted lay executors to hire outside investment counsel, even trust companies, have them manage the portfolio because of their expertise, experience, safekeeping and all those good things, and then they have permitted the executors to disperse those expenses as a cost of the estate rather than forcing them to deduct it from their own compensation.

The same thing applies square on in administering incapable persons' affairs. If National Trust, for example, were appointed as your administrator, or guardian I should say, and we invested or retained all of your

existing investments in mutual funds, what would the average person in the street think should happen to the compensation that we were able to claim? Should it be reduced, should it be increased because we're taking greater risk or what should happen?

It's a very dicey recent issue, especially given these recent court cases. If you want to encourage lay executors to invest in mutual funds, the answer's fairly clear. However, it's a policy problem.

My last point are the so-called anti-ademption provisions. This is a very technical point. I think Barry Corbin gave you a fairly extensive paper on this topic. This again represents an administrative nightmare more so for lay guardians and attorneys than for trust companies, but the policy problems are very great here. This is where you're talking about if the guardian decides that they'd have to sell the cottage to pay for mom's care, and then after mom's death, we dig the will out and find out that the cottage was given to sister Sue. What happens?

When people wrote their wills, of course, anti-ademption provisions of this statute were not in existence and therefore couldn't be taken into account. It's a very, very thorny issue. From an administrative point of view, it's very difficult too. Do we set the money aside? Do we compound the interest? Do we forget the interest? I urge close attention to Mr Corbin's submissions on the point because they may raise more questions than he provides answers, but it's one of those nightmares that's going to get lay administrators in problems distinctly.

Those are all my points, ladies and gentlemen. I'll be happy to deal with any questions.

Mr Parker: How much time have we got?

The Chair: The Liberals are caucusing, so they'll be back, but you have about two minutes.

Mr Parker: I wouldn't want to take their time. That wouldn't be fair.

Thank you very much for your presentation this afternoon and for your very helpful comments. You're right, you've gotten into some pretty arcane and esoteric areas here. It'll make your brain hurt if you try to get too deeply into some of this stuff. In the time available let me just address one: Your recommendation concerning prospective consents to appointment as guardian. Frankly, I thought we did a fairly decent job of addressing that whole area in section 11, which amends subsections 17(4) and (5), which requires that when appointing a statutory guardian you would look at someone who has the ability and is suitable to manage the property and that the public guardian and trustee take into account and consider the incapable person's current wishes, if they can be ascertained, and the closeness of the applicant's relationship to the person.

Bearing in mind here that we're dealing with a situation where we're all forced to predict into the future as to who's going to be suitable at the time, we have to balance off certainty on the one hand versus the flexibility to choose the right person at that point in time on the other hand. Are you uncomfortable with the way that has been handled in the bill?

Mr Davis: No, I'm not being critical of the way the bill is presently structured, I'm proposing a new and to me somewhat novel concept because I recognize that if

a client has given a trust company a power of attorney, they would have, I think, first priority to become guardian.

I'm addressing the group of individuals who haven't given anybody a power of attorney but can identify who they would want appointed as their guardian if they became incapable, just as they can identify who they would want to be executor if they died. If they were able to sign a piece of paper saying, "If I become incapable, I want my friend Mr Parker to be my guardian," and if that happened and Mr Parker then had first priority, that I think would represent a big step forward in personal choice. That's all I'm saying.

Mrs Boyd: On the issue of witnesses, I think you're right. I mean, it might be serious, although certainly employees of lawyers have always witnessed and I think people are used to it, but you say there have been questions raised about the validity. Is that because the person of the employee is seen as being the same as the person of the trust company? Is that the issue there?

Mr Davis: I think the issue is sensitivity to self-dealing and conflicts of interest. Just as we don't want a beneficiary to be the witness on a will and we don't want the attorney or their spouse to be the witness for the power of attorney; there's this feeling that an employee of the trust company is somehow too closely affiliated and therefore it may violate that self-dealing threat.

Mrs Boyd: Yes, it's a problem, because it might be an employee of anybody who became an attorney. For example, if it did happen to be the lawyer, it might be an employee; if it happened to be a neighbour, it might be someone who worked for that neighbour. I mean, it is a bit of a problem. So you think the issue would be just somehow making it clear that an employee of the proposed person could be, or—

Mr Davis: I'd like to confine it, if I may, to employees of trust corporations. Trust corporations are very heavily audited and regulated.

Mrs Boyd: So that's where the safety aspect comes in.

Mr Davis: Yes. Taking up your point, I can see that if I was the son of a person and I had a business, I could prevail upon two of my employees to witness this document from Mommy and that would be potential abuse to be stopped.

Mrs Boyd: So it's specific to the trust situation, where there are all sorts of checks and balances.

Mr Davis: Yes, a trust company of course is the only corporate vehicle that can act as a trustee, but it's a one-off situation, but it would just be a nightmare if some judge formed that view.

Mrs Boyd: Your sort of recent issues are certainly interesting. Your issue 3(d) has been mentioned before. That has been seen as an issue and I don't know whether the government is planning to bring something in to deal with that, but the others I don't think we've heard of before. So it's helpful to have your view on that and it would be helpful to get some advice from the public guardian and trustee on sort of their experience around that.

I can keep talking if you'd like.

The Chair: No, thank you. Thank you, Mrs Boyd.

Mr Davis, thank you very much for your presentation.

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We can deal with this right now. The Niagara Mental Health Survivors Network made a presentation before this committee and at that time indicated to the clerk that it wanted us to consider reimbursing them for mileage and parking from the city of St Catharines to Toronto. They have put it in writing by letter dated February 13, 1996. It's \$85.20 at 30 cents per kilometre for mileage and parking was \$14, for a total of \$99.20. What is your pleasure?

Mr Marchese: I move that, Mr Chair.

Mrs Johns: Do we have a policy on that as a government—what we do with respect to this?

Clerk of the Committee (Ms Donna Bryce): They're considered on a case-by-case basis and it's up to the committee to make that decision; so no, there isn't.

Mr Marchese: We've always done it.

Mrs Johns: Have we? Okay.

Mr Gary L. Leadston (Kitchener-Wilmot): Mr Chairman, I think we should develop a policy, because then what would prevent any of the groups writing the committee that appeared in Thunder Bay and Ottawa and travelling from, say, Toronto to Thunder Bay to be heard and requesting reimbursement?

The Chair: Yes, except we're dealing with it case by case and we'd just refuse to pay it.

Mr Leadston: I think if you deal with one then you set a precedent and then you have to treat them all the same, to be equal and fair. I think we should deny this request.

Mr Marchese: I would recommend that we approve this and that if we want to have a discussion, subcommittee might talk about it, because some members don't know the practice that we have adopted in the past, which all parties have agreed to. But it might be useful for us to have that discussion as a committee at some point, but I think we should approve this request and move on.

Mr Leadston: I would prefer, then, if you would defer it to the subcommittee. I'm not aware of the past practices and in fact it would come back to us.

Mr Marchese: I appreciate that, but if Ms Bryce could speak to what's been happening in other committees, because we've had these discussions and then we've approved them. We could go over these again, but if you might speak about general practice in other committees, Ms Bryce, that would be helpful.

Clerk of the Committee: General practice is they are case by case. As people make requests to the committee, the committee discusses them and makes decisions.

Mr Leadston: Are all individuals or groups that appear before all the standing committees aware that their expenses may be paid?

Clerk of the Committee: No, they're not made aware of it in advance.

Mr Leadston: That's what I mean. I think there should be a policy. I won't support the motion. I'll support that you take it back to committee and come back with some recommendations.

The Chair: Mr Marchese, that's not technically an amendment, but to solve the problem—I don't want to spend a lot of time—should we refer it to the subcommittee where Mr Tilson will be there and probably familiar with the practice in the past?

Mr Marchese: Yes.

The Chair: Okay. We're referring it to the subcommittee and we'll deal with it at our next meeting.

COALITION FOR LESBIAN AND GAY RIGHTS IN ONTARIO

The Chair: The next submission we have is from the Coalition for Lesbian and Gay Rights in Ontario, Nick Mulé. Welcome.

Mr Nick Mulé: Good afternoon. Thank you for having me here. The emphasis in the deputation will be on that part of Bill 19 that seeks to repeal the Advocacy Act. That's what I'll be presenting on.

In 1991, the Coalition for Lesbian and Gay Rights in Ontario, also known as CLGRO, supported the former NDP government's Bill 74, An Act respecting the Provision of Advocacy Services to Vulnerable Persons. Our support for this act was based on its recognition of the true state of vulnerability a person may fall into due to one incapacity or another.

The lesbian, gay and bisexual communities are a population that exist on limited rights in this province. Additionally, we have witnessed, lived and died through the devastating effects the AIDS epidemic has had on our communities. Bill 74 served to protect vulnerable people by informing them of their rights and intervening only when appropriate.

Health Minister Jim Wilson has stated that by repealing this act, a level of bureaucratic government would be eliminated. There would be less intervention by the state and decision-making would return where it belongs, to the family. What Mr Wilson and his government fail to understand is that not all people have positive, trustworthy relationships with their families and, as with child abuse, state intervention is sometimes required, particularly with vulnerable adults.

We have 10 points we're putting forward with regard to the repeal of the Advocacy Act.

Bill 19's revision of the Consent to Treatment Act, to be replaced with the Health Care Consent Act and its amendments to the Substitute Decisions Act as well as additional acts in respect of related matters, effectively removes the option truly vulnerable people needed to learn of their rights, assess their needs and make informed decisions.

The repeal of the Advocacy Act may directly affect those lesbians, gay men and bisexuals who have not delegated a power of attorney, are not in a recognized partnered relationship with a significant other of one year's duration or longer, are alienated from blood relatives and are incapable of determining their health and wellbeing provisions.

The Advocacy Act takes culture and traditions of vulnerable persons into account, enabling them the opportunity to make autonomous decisions with dignity. This is very important to the lesbian, gay and bisexual communities in the face of adversity towards our culture and traditions.

The act allows vulnerable persons, inclusive of lesbians, gay men and bisexuals—for example, people living with AIDS, those who are mentally, emotionally, physi-

cally or psychologically incapacitated—to organize much-needed mutual aid associations with the help of government. The removal of this opportunity will only leave these people more vulnerable.

The Advocacy Act allows for intervention in a situation in which a lesbian, gay man or bisexual person were to be pressured to enter a custodial relationship with estranged people, such as blood relatives, or in which the vulnerable person were to receive treatment deemed adverse to his or her sexual orientation, such as aversion therapy.

The Advocacy Act helps vulnerable persons secure lifestyle opportunities in accordance with their identity, for the act accountably designated a board to consist of those vulnerable communities to advocate on behalf of their peers.

The act guarantees that attempts are made on behalf of vulnerable lesbian, gay and bisexual persons whose housing in controlled access residences or facilities that are not sensitive to their needs become sensitive to their needs through the regulation of such facilities by advocates.

The presence of this act is not just another bureaucratic level of government, but rather a resourceful and helpful intervenor for people who cannot afford costly lawyers.

Importantly, this act begins to address the heterosexism and homophobia that still very much exist in this province's health care system.

Finally, the Advocacy Act allows for the recognition of alternative or chosen families in addition to traditional families.

Mrs Boyd: Thank you very much for coming and talking to us. I think in fairness we should say that some of your assumptions about what the Advocacy Act did cross over into what the Substitute Decisions Act did, or the Consent to Treatment Act, and I think we maybe need to sort that through a little bit. For example, I would say on your second page, where you talk about the act guaranteeing the regulation of facilities through advocates, that's not exactly what you mean, I think. I think you mean that the advocate had the right of entry to facilities, had the right to get information about people and then advocate on their behalf. They didn't actually regulate the facilities, but they indeed could advocate on behalf of the individual who was in the facility. So I think we just need to be clear that we understand what you're saying.

You have raised an issue that is of great interest to me, your bullet point where you talk about aversion therapy being used in terms of sexual orientation. This issue around electric shock and aversion therapy has mostly been talked of in the context of a particular program in Southwestern Regional Centre which is around self-injurious behaviour by a very small number of individuals. But we did have a psychologist who came and told us about aversion therapy around sexual deviation in London and said he had literally hundreds of patients who came to his office and had aversion therapy in terms of sexual deviation.

As I understand it, it consists of, any time a person thinks of the particular sexual object that arouses them, an electric shock to their system to discourage them from

being excited by that particular thing, whichever it is. In fact, because this act, Bill 19, would allow aversion therapy on the request of a substitute decision-maker, you have raised an issue that's a very important issue for us to consider. It has not been the major focus of a lot of the attention here, but I do know that there are those who believe in aversive behaviour modification who advocate very strongly in terms of changing people's sexual orientation through aversion therapy, and in fact in a lot of the cases that we hear about where people write about having been cured of their homosexuality, that indeed is one of the methods used by private psychiatrists, on their own consent.

But what we're talking about here is a completely unregulated ability of substitute decision-makers to allow treatment of this sort for people who are not in a position to have capacity for consent. I'm glad you raised it because it's an issue that most people don't know about or don't talk about. Have you run into areas where people have had this suggested to them, where people have suggested that this might be an option?

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Mr Mulé: We have and it's something that kind of crops up here and there. The problem with that is that it tends to happen to people who are not well supported by those in their circles. In essence, they're people who are very much closeted and only getting negative feedback from those who just happen to be in their circles and then end up being their substitute decision-makers, and that's the frightening part of it. What's most angering about that form of therapy is that, scientifically, there's nothing to prove that one's sexual orientation can be changed, despite the fact that psychiatrists or psychologists still engage in this.

Mrs Boyd: In fact, if you change behaviour by giving people a shock every time they think of the other behaviour, it really is questionable, isn't it, as to whether the behaviour has changed or whether people are simply being punished for doing what they do?

Mr Mulé: Exactly.

Mrs Boyd: I think it's particularly dangerous for people who are cognitively impaired, developmentally delayed or, through mental incapacity or brain damage, unable to exercise their wishes. It's a very, very serious issue.

Mr Marchese: I have one question, Mr Mulé. We as a government set up the Advocacy Act and the Advocacy Commission, largely made up of consumers, but other representatives of the various fields connected to vulnerability. Many of the things that it did were to do education, to do training, community development, system advocacy and hire rights advisers to give people rights in various situations. This is a very brief description of what they were doing. They didn't have much time to do all of these things, but they'd certainly begun dealing with hiring rights advisers across the province.

My view is that the state has a role to play in advocacy and indeed has a role to play with an advocacy commission such as the one we set up to do those various functions. The government disagrees with that. I would just like to know your opinion based on the kind of community that you are involved with and work with on

a regular basis. Do you believe the state has a role to play in these things, in these areas, or do you believe we should be supporting other communities out there that are doing advocacy in general and leave it at that?

Mr Mulé: I think, provided that the state is able to respect the Ontario Human Rights Code and all the characteristics that are listed in there for every human being in this province, there is a role for it. Wearing my other cap, as a professional I've worked in the health care system and over the years there has been this philosophy or this approach that's been developed in which sometimes the approach is taken that the system, the physician, the institution know best for what's required for a patient, and that's sometimes at the very expense of the Human Rights Code. It's really unfortunate to see that. I think there is a role for the state to be involved with that, provided that the code is respected, that all the various characteristics that are listed in the code are respected and there is that equality put across the board. I'm basically just putting out here that the system can fail very easily, and we've heard one horror story after another of people's rights not being respected.

Mr Marchese: Yes, I agree. My sense, of course, is that such a commission would be very respectful of these things and that they come out of a field respecting human dignity, human autonomy and human rights. I personally don't see that kind of conflict with respect to that commission.

My question was more of a general nature: Do you believe that the state has a role to play, or do you think we should just give a few bucks, if we have it, to a few community groups that are doing advocacy out there to do their job? Do you think that's sufficient? Do you think those organizations have the power, in terms of right of entry, to be able to get into institutions and deal with abuses?

Mr Mulé: No, they wouldn't have the power. I think you'd have to develop something quite complex if you were trying to get it out to as many communities as possible across the province, and it would take a lot of money. If you're saying a few bucks, it's not going to go far enough. As long as a commission would be in place, it would need to have representation from the various communities in order to function appropriately.

Mrs Johns: I just wanted to ask you a question about your second bullet point, which is basically the gay and lesbian people not having a partner and not wanting to choose their blood relatives. In the Health Care Consent Act, as I think you're saying in your last point, last bullet on the second page, you are aware that you as a person can choose to have a friend chosen to make consent decisions for you under the Health Care Consent Act, or that friend can come along and say, "I'd like to be the person who makes decisions for my friend as a result of his being incapable to make decisions." So we have said that it doesn't always have to be the blood relatives. Someone else could come along who chose to go to the Consent and Capacity Board and get that approval to be able to make decisions for a person who would be not a blood relative. Is that what you're meaning by the last point? Is that why you're saying that you're fairly happy

with that aspect on the last page? It seems incongruous; I'm not understanding.

Mr Mulé: We are happy with that as long as people are aware of it. What we're trying to highlight there is that the very role of the Advocacy Commission would have been to inform people that they do have that option. I don't have the greatest level of confidence that when someone is in an incapacitated state within the health care system, they're going to be given all the free options. What I have seen in the system is that expediency is first and foremost. What people know in the health care system is traditional family relations, and they go through that route. Sometimes people, when they're incapacitated, can't be very up front about exactly what their needs are. The situation of our community is that some of them cannot be very open and out about who they are in that system. So that's where it becomes conflicting.

Mrs Johns: From the very beginning of these hearings, when the minister spoke to kick it off, I think Jim Wilson said at a particular point that we were looking for a way, we were here to listen to what people had to say about how rights advice should be given to people, what the needs were, how we were proceeding through it. All of us have come up with maybe a different way. We're all considering that and we'll be debating what may be the best approach to it next week.

I think that we're all cognizant of the fact that in some way people have to know of their rights. There's a group of people out there who believe that the health practitioners can do it, and there's another group of people who believe that they may not be able to do it, and another group who believe that if there's some coaxing, they will do it. That's what we're starting with at the beginning of next week, to try to ascertain how we can move forward to make sure that people are getting the rights we all would like everyone to have. So I appreciate you bringing that to our attention.

Mr Ramsay: I'd like to thank you very much for your presentation. Since I've just arrived, I will go over it tomorrow and we'll use it in our consideration for amendments in our deliberations next week.

The Chair: I thank you very much for attending.

Mr Mulé: Thank you for having me.

The Chair: Now, I believe that our 3 o'clock submission, the Thomas More Lawyers' Guild of Toronto, is not here at this time. Oh, they are here? Well, let's move right on with them then. That's great.

While we're here, I mentioned we'd need a starting time for Monday. I was going to suggest 10 o'clock for Monday morning. Is there any objection to that?

Mr Ramsay: I'd like to move a motion because of the pending strike situation. I don't know what the committee organization, the Legislative Assembly, might be doing as a contingency plan. The 10 o'clock would be fine, but if there was a strike situation, I think we'd want to assure that there would be at least one member from each of the parties present before clause-by-clause commenced.

What I'm getting at is, what if this building is picketed, for instance, and members don't feel comfortable in crossing those picket lines, and yet because the Legislative Assembly staff is not in the same union and this committee might proceed, it really puts some members of the committee in a predicament.

So I was just wondering. That's one motion I'd like to at least put on the record, and maybe there'd be some discussion come from that.

1450

The Chair: I'm sure there will be considerable discussion. Yes, Mrs Boyd.

Mrs Boyd: I think safety aspects might well be a consideration as well, Mr Chair.

The Chair: What kind of aspects?

Mrs Boyd: Safety aspects, in terms of if there is a very strong effort to prevent—I mean, frankly, this would probably be of equal if not more concern to government members than it would be to non-government members in terms of the safety aspect of getting into the building. I'm sure the security recommendations will be that if anyone senses or feels they're in any danger that they not cross lines. I think those would be the instructions that would be given from a security point of view to all members of the Legislature, and indeed even from the Speaker, and that should be a consideration in terms of the discussion.

The Chair: I don't think this is an opportune time to deal with your motion. We'll deal with it later today.

THOMAS MORE LAWYERS' GUILD OF TORONTO

The Chair: Welcome. This is the Thomas More Lawyers' Guild of Toronto.

Mr Hugh Kelly: My name is Hugh Kelly and my colleague is Mr Phil Horgan, who will start off to address you today.

Mr Philip Horgan: I've passed up 30 copies of our brief, which due to time constraints we brought with us today. Perhaps it would be helpful to have the members of the committee receive those as we go through it. We won't be reading from the brief. We'll be highlighting various packages or parts of it, and perhaps it could be reviewed later by members of the committee during their own deliberations.

The Thomas More Lawyers' Guild of Toronto has roots in Toronto and area since 1925. It is a non-profit corporation which has support from approximately 400 lawyers in the Toronto area. The guild's mandate includes encouraging the discussion and study of jurisprudence with a view to making the Catholic perspective known and relevant to the administration of justice and the daily practise of law. In recent years, our guild has hosted medical-legal conferences: in 1992 on bioethics and new reproductive technologies, in 1993 on euthanasia, and we presented a brief to the Canadian Senate committee on euthanasia in 1994 prior to its report in 1995.

With respect to Bill 19, the guild considers many of the provisions in the new legislation to be an improvement over the existing legislation. Specifically, the promotion of the role of the family, the simplification of procedures for appointing substitute decision-makers, the removal of barriers for family input and reduction of some bureaucracy are always laudable.

Specifically, the changes proposed with respect to emergency treatment I think are an improvement, and the removal of what we would consider the normal incidents

of living from the definition of treatment is a good first step in ensuring that those normal incidents of living are never denied to a person or patient in the health care system.

We will be bouncing off each other in terms of our presentation and I'll turn over the next step to Hugh Kelly.

Mr Kelly: If I could direct your attention to page 7 of our presentation, I'd now like to take you through our summary and recommendations and then we will come back to a small elaboration of some of the points.

First, we believe protection should be afforded to ensure that the basic incidents of living, including nutrition and hydration, should never be denied to a person on the grounds that it is treatment.

Secondly, provision should be made for notification of the patient and his or her family on a determination that the patient lacks capacity for decision-making.

Thirdly, although it may be preferable to establish a minimum age for an absolute requirement for parental consent for medical decisions, at a minimum the act should establish a rebuttable presumption against capacity for children below the age of 16, together with some provision for notice to parents or the custodial parent, as the case may be, in the event there is an attempt to rebut that presumption.

Finally, family members should be accorded notice of an application on behalf of an individual or at a minimum be provided with notice and the right to participate in any hearing before the Consent and Capacity Board in order to provide recourse to family members in applications before the board.

Mr Horgan: If we could then turn to the body of our brief, commencing at page 2, perhaps Hugh can continue on with that part.

Mr Kelly: The first issue we address is the issue of basic necessities. We include in that nutrition and hydration. The reason for our concern arises because there is a power by regulation, at least theoretically, to exclude nutrition and hydration from personal assistance service, thereby permitting it to become a matter of treatment. In our judgement, that should never be possible. The issue of hydration and nutrition should always continue to be a matter of personal assistance service, and that is the basis of our first recommendation.

Mr Horgan: Turning to Roman numeral II, the first three paragraphs discuss the issue with respect to notice. Bill 19 doesn't establish specific rules for determining capacity. Those issues are left to clinical practice. The assumption underlying that scheme is that a practitioner, which is a widely defined term, is capable of assessing that capacity without bias.

Moreover, the problem is that there is a difficulty in that notice need not to be provided to that patient if in fact they are deemed to be incapacitated. We'll be dealing with this in the procedural safeguard section of the brief as well, but it seems to me a simple measure to provide some notice for that individual and his or her family in order that they may have recourse to the curative provisions of the act.

The balance of our submission in Roman numeral II deals largely with this notion of presumption and the presumption that is being established by subsection 3(2)

in favour of competency for all persons, including children. I'll try to organize my thoughts in six different points.

First, subsection 3(2), in conjunction with subsection 9(1) of the bill, does not include any requirement for a parent's consent, let alone even a parent's notice, of decisions that may be made by a medical practitioner. In effect, that establishes, in our view, a false presumption of competency in terms of children's or early teens' ability to make an informed consent.

Without the parent's involvement or in fact notice being given to a parent, a medical practitioner may be lacking in terms of crucial health information, or the child in dealing with misunderstanding risk factors for a proposed course of treatment.

1500

As we've set out on page 4 of the brief, it leads to an inconsistent application by this Legislature of various other ages for responsibility or for decision-making, many of which have to do with the health and safety field.

We talk a little bit about the cases, on pages 3 and 5, of the Supreme Court of Canada: *B(R) v The Children's Aid Society of Metropolitan Toronto*, from January 1995, which commented on the Child and Family Services Act and the fact that although that act was deemed to be constitutionally acceptable, it also was found to be such because of the various safeguards incorporated to allow for parental rights and parental notice and a recourse for parents to redress that which may be performed or pursued by a children's aid officer or worker. So there's a concern there about whether in fact the provisions of this act may be found to be unconstitutional.

It's not included in our brief, but in the initial reading of the legislation from 1991 with respect to the Consent to Treatment Act, the initial first draft of the bill incorporated a presumption for incapacity for those under 16. On the second reading of that bill, it was removed.

In effect, the concern that we have is that in order to avoid the bill or the act being found to be unconstitutional as an unnecessary intrusion into a parent's section 2 rights or section 7 rights under the charter—section 2 being freedom of religion, section 7 being freedom of the person—that in effect giving a presumption in favour of capacity to a child under age 16 reverses an onus or puts an onus on a parent or on some other party to try to rebut that presumption.

Finally, from a policy point of view, the concern that we have, as you should have, as stewards of the health care system in Ontario, is a concern that children making these decisions without recourse to their parents may lead to additional cost.

I'm trying to put this into an example format. If a child broke his or her nose playing road hockey and needed that nose to be reset, possibly under anaesthetic, conceivably that 15-year-old child could go through that operation, as long as the medical practitioner was satisfied that he or she was capable. But it seems to me the involvement of the parent at that stage would be helpful to know previous medical history in far greater detail than what the 14- or 15-year-old child may know, and the risks involved with an anaesthetic procedure. There are numerous examples. I throw that one out perhaps to give some flesh to the bones of what we're talking about.

In effect, our concerns can be addressed rather easily. It seems to me that you can incorporate a presumption in favour of incapacity for a child aged 16 and under. In fact, many parents, including this one, would probably mandate that actual consent be obtained if a medical practitioner were to take steps involving my child. Perhaps being an overbearing parent, I would expect that perhaps until age 18. Nevertheless, it seems to me at a minimum that presumption of incapacity for children under age 16 is a necessary safeguard that should be incorporated into the bill.

Mr Kelly: Recognizing that the committee has probably heard in other forms much of what we have to suggest to you, we have consciously tried to limit our presentation to what we think are perhaps a couple of key points.

The final one no doubt you have already heard about before and it flows from some of the points Mr Horgan was making a moment ago; that is, the question of notice to the support mechanism for patients in proceedings before the Consent and Capacity Board. We have recommended, as I noted at the beginning, that notice be required to be given, which in our view is consistent with the concept set out in the purpose of the bill, clause 1(e), "to ensure a significant role for supportive family members when a person lacks the capacity to make a decision...."

We believe that for consistency with that concept, the supportive mechanism for a patient, whether that is a parent or a child, or in appropriate cases siblings or other relatives who form part of the person's family constellation, where known, those persons should be required—not simply permitted—to be brought, or at least invited to come, before the Consent and Capacity Board.

Our purpose for suggesting that is that the members of the support group then are in a position to provide some assistance to the board in making its decision. We are not suggesting that in every case that support group will necessarily provide information or will necessarily come in every case, but they are persons who have relevant information that would be useful for the board to make its decision.

Finally, there is provision that the board can sit alone; that is, a single person. Based on our experience in dealing with this kind of application, we favour an obligation that, with relatively minor exceptions, that board should be composed of not less than three, of whom we believe one should be somebody experienced in the capacity issue, such as a qualified medical practitioner, and another should have adequate legal training as the sections now provide. We do not believe it is in the interests of those who will come before the board that the issue of expediency should determine how those hearings are conducted, but rather that it should be done by a panel of three.

That concludes our formal presentation to you. We would be delighted to try to assist in answering any questions the members of the committee might have.

1510

Mrs Johns: Thank you for your presentation. Some of these items we have heard before, but we appreciate being reminded of them.

We've had lots of talk about the age issue, as you can well guess. We had a presentation this morning, which was a group of lawyers again, and they were talking about the age issue and the 16 issue. They were talking about the case of Sheena B., Re. I'm unsure about how you categorize these. I think you're quoting it here when you're talking about four of the nine judges, in the last paragraph on page 3.

They suggest that there's a very dissenting vision from that case and that four of the judges took the stand that you're basically taking and five took the other view. The other view was a definition where they drew a distinction between infancy and children at different ages. I believe the judge who maybe has the opinion that's the most different from the one you're quoting is—

Mr Kelly: L'Heureux-Dubé.

Mrs Johns: L'Heureux-Dubé. They didn't have time to explain the difference in the judgements and I was wondering if you could do that in a pretty short style explaining why there was the controversy between the four and five judges in that issue.

Mr Kelly: The simple answer is it is not possible to give you something short. The judgement runs quite extensively and there are some very subtle differences. It turns on the interpretation of the charter rather than the individual statute. In this case, it was the Child Welfare Act, subsequently replaced by the Child and Family Services Act. The common thread, though, that emerged from that, which we are urging on this committee, is to recognize that all the judges appear to have recognised there is a right in a parent that is not an absolute right, but is a relative right relative to the circumstances and relative to what society at large is prepared to accept.

There are clearly differences between the approaches the judges make and, I'll be quite honest with you, I'm not quite sophisticated enough to be able to understand all those distinctions to be able to try and explain it simply. Given about two weeks, I could probably come up with something that would be easier to understand.

Mr Horgan: If I could assist a little bit, I'm not in much of a position to comment in deep fashion on the case. However, let's take a look at the provisions. In the Child and Family Services Act, some of the judges found that it infringed constitutional protections afforded parents. However, the legislation was saved because there were remedies available to the parents through a court application proceeding which incorporated duties of fairness and so on to get that control or consent capacity over their own children.

You don't have that in Bill 19. In effect, a child who we say—if you take a look at other cases including the Galaske case—the courts have found that children under age 16 are just not in that position, in many cases, to make those kinds of decisions. Mr Justice La Forest, in dissent in the case, almost speaks to Bill 19 in one of his comments in which he says, "Can you imagine any act where there wasn't something like this?" Well, that's Bill 19. In effect, there's no real protection there or no saving protection in the current bill as it's drafted which allows a parent to challenge the capacity determination of the medical practitioner. Once that determination is made, it's made. More importantly, the doctor or the medical

practitioner, as that term is defined, has protection under the act with respect to liability.

Mrs Caplan: Thank you very much for your presentation. We've had other presentations before us on the issue of whether or not the law should be silent and I'm aware that common law supports the principle that children who are mentally competent should be able to consent to their own treatment. So the question becomes, how do you judge that? I was struck by the presentation from Sick Children's Hospital which used the example—not of the child with a broken nose, but it could apply—of a child coming in with a sexually transmitted disease where the child said they were afraid to go to their parents, didn't want them to know, were afraid even to go to their local family doctor and wanted to go someplace where they could have that anonymity because of their embarrassment or concern.

If they didn't have that opportunity to go to a doctor who could judge that they were capable to consent to that, we would see a situation where there could be very serious consequences either for male or female children from the result of untreated sexually transmitted disease.

What the doctors told us from Sick Children's Hospital was that ability to understand and comprehend the consequences of treatment varied as children mature, and therefore it was inappropriate to have any one specific age limit because it also depended upon the actual and individual situation.

I'm comfortable with the silence in this legislation on that issue because I think practitioners, wherever possible, with the consent of the child, or without the consent, try to apply reason to these situations to encourage parental involvement. I believe that's what happens in the normal course of professionalism. But where a child comes in with an issue where they specifically request anonymity and confidentiality, then there's an obligation for the practitioner to determine in their own mind whether they believe that child is understanding and can appreciate the consequences, which is the test of competency, and if they are, then they can treat that child in the child's best interest. I think that's appropriate in this legislation and I think common law supports that.

From what I've heard around the committee, there's pretty much unanimity of opinion from the committee members with that comfort, given the basis in common law and in policy. So while I appreciate your explanation and your presentation from your point of view, for myself and for our caucus we think the legislation as it stands meets the test of reasonableness.

Mr Horgan: If I could go first, we're suggesting, as was first brought forward in the first reading of the bill in 1991, that it could be a rebuttable presumption. In other words, it's something which could be challenged and if the merits of the case suggest it, then that would be possible.

Mrs Caplan: How would you protect confidentiality of the child in that situation?

Mr Horgan: I believe that in the circumstances the doctor would have to inform the child, "I'm not in a position to do this without notifying your parents unless application was brought perhaps by you or an adviser." But if I could take it a step further—

Mrs Caplan: I think that's the reason that provision was dropped.

Mrs Boyd: I think that is why the provision was dropped, that in fact children don't have the ability to do that in a way that would enable us to be sure they had an opportunity to fight that, and that's a real issue. I understand you don't want children to fight it. I think we just have to make it clear that—

Mr Horgan: Let's back up with that. If you make that assumption, then you're also giving some question as to the assumption upon the child's ability or capability to make the decision.

Mrs Boyd: No, the capability to make a decision is very different than paying the costs of doing an application.

Mr Horgan: The other point I wanted to raise in response is that the law has an educative function and it seems to me that the education that's being provided to children by the current bill is, "You can keep secrets from your parents," and the question is, is that the policy initiative that we wish to pursue in Ontario?

It strikes me that it seems to me because of the tender years doctrine and the notion that children have special needs and don't have the world experience or maturity to deal with those types of things, all we're suggesting is that the presumption be made in favour of incapacity. That's not something that can't be rebutted, but it seems to me if that's in the educative function, that's something that's not being looked at strongly enough in the bill.

Mrs Boyd: We hear you making that suggestion, but I would echo what Mrs Caplan has said, that all three parties have agreed that this is a more appropriate way to go. I'm just trying to be frank with you. At this point in time, although we've heard this argument, I don't think you have agreement around the table.

I am interested, however, in your provisions around nutrition and hydration, because I share some of your concerns around the withdrawal of those issues. I'm worried about your statement on page 2, in the second paragraph, where you're talking about such necessities should not be included in the definition of "treatment," because I think there are many situations in which treatment needs to be used to describe that sort of thing; intubation, for example, in some situations, even intravenous treatment in some situations.

Part of what we've been trying to do is figure out some way to enshrine the notion that someone will always be offered nutrition and hydration but that at some point you may cross the line into a treatment area. Some of the situations that have been mentioned have been where someone is anorexic, where someone is in a coma and is unable to swallow, those kinds of situations, in which case it would be a treatment situation. How do you respond to that?

1520

Mr Kelly: What we're concerned about in making this presentation, our principle focus, is where the patient himself or herself is incapable of making the decision and it's a substitute decider. The blunt reality is that the removal of hydration and nutrition can require a patient to starve to death. We're saying that should never happen. I don't have any ready solution for the dilemma

you're describing, but if it is not treatment in the elective sense, in a sense it can be provided or not provided—

Mrs Boyd: But in fact you can do harm to a patient whose kidneys have shut down if you keep on hydrating them. All you do is create this huge edemic situation. There would be situations in which the withdrawal of hydration within a certain number of hours of the end of life might be an appropriate decision.

Mr Kelly: There would be no disputing that. Just as a mushroom can poison somebody who's in perfectly good health and you don't apply a poison, hydration can have that effect. That's not our point. Our point is that in the normal routine there will be some extraordinary exceptions, and I think we have to agree that these are extraordinary exceptions, not the kinds of things that are likely to be happening on a routine basis. Our concern is to ensure that it isn't converted into a treatment where it's inappropriate.

The Chair: I thank you very much for your attendance, gentlemen.

Mr Kelly: Thank you, Mr Chairman, for allowing us to come and present to you.

The Chair: As our next witness is not yet here, this may be an opportune time—Mr Ramsay is not here, but I'm sure he'll be returning. I'll read Mr Ramsay's motion so that everybody's aware of exactly its intent.

"I move that clause-by-clause deliberation of the justice committee will not commence until there is at least one member from each opposition party present."

Mr Ramsay, I'm sure, will be back and will speak to it, but perhaps you would like to speak to it yourself, Mrs Caplan.

Mrs Caplan: Thank you very much, Mr Chairman. I hope there will be support for this amendment. Our concern is the uncertainty of what's likely to occur on Monday, and we want to be able to ensure that all members of committee have an opportunity to be here. I'm referring now to the possibility of an OPSEU strike. As an alternative, I know Mr Ramsay intends to suggest that the committee be held offsite so that all members of the committee can attend and the public can attend. There are many who would not want to cause any undue disturbance trying to enter the building if that were the situation. I personally would not like to be in that position of having to choose to place amendments and participate at committee and to cross a duly struck picket line.

I would hope this wouldn't be a partisan issue. That's not the intention of the motion in any way. It is to say we would like to see the committee continue if access to the building is available. As long as one member from each caucus is here, we can commence. If there is not access to the building, we could move the committee hearing offsite so there would be access, and all we would do is notify with a sign on the door that the committee was commencing. Certainly we would all like to be there to participate in the important deliberations of the committee.

That is the intention of the motion. It's one that we think is a reasonable one so as not to provoke any undue stress or tension around what will be a stressful and tense time. My own hope is that there is no strike. I want to go

on the record and say that. My hope is that there is no strike and that the committee can proceed in its normal course of events. But Mr Ramsay placed the motion before the committee at this time so we could anticipate the possible and have an agreement among the committee so that the committee's work can move forward in an unfettered way.

The Chair: The clerk has advised me that this is a motion on the floor, that any member is entitled to speak to it, there is no time limit on the debate, and the motion is amendable.

Mrs Boyd: I'd like to indicate that our party would definitely support this motion. We believe very strongly that access for all members is important to be able to continue the very hard work this committee has done. This has been a very valuable experience for all of us and it would be a shame for us not to be able to continue to work together to make the kinds of improvements in this act that would meet the needs of the citizens who've come in front of us.

I think the other issue is access by the public to the debate on clause-by-clause. I think it's extremely important for us to remember that there has been a good deal of public interest in this legislative process, that many of those who are interested in participating are people who have various forms of disabilities which make their access to any kind of situation more difficult but, in the circumstance of a very strong effort on the part of OPSEU to prevent people from entering the legislative building, would certainly make it much more difficult for them. For example, it is unlikely that their Wheel-Trans drivers would cross the picket line and it would essentially prevent them from being present to hear the debate of a bill that really affects their entire way of life. I think we need to keep that in mind.

As I mentioned to you before, Mr Chairman, I think the issue around safety is an issue we should keep in mind. A legislative committee currently is looking at safety issues around the Legislature, and I do think it is incumbent upon us to be very clear that under these circumstances there are always issues of safety for anyone involved in trying to cross a duly constituted picket line. That is not in any way casting aspersions on the particular union. It is simply that it is a highly charged kind of situation and it is an issue that needs to be kept in mind.

I would say that most employers, in a circumstance where they have management people or people from another bargaining unit who are going to have to cross the picket line, will issue to their employees some assurance that they will not in any way be punished if they do not feel safe in crossing a picket line. That is certainly very often the tack an employer would take. I would hope that our employer, the Legislative Assembly, would take a similar tack. That then means that for members of the Legislature, if indeed there is a safety issue involved, it would infringe on our privileges as members of the Legislature if proceedings went ahead when we were unable to attend because of those reasons. I think it is important for us to keep that in mind as we debate Mr Ramsay's motion.

1530

Mr Ron Johnson (Brantford): I certainly want to say that I'm opposed to the motion for a number of reasons. Number one, I think it's premature. At this time there has been no strike called, and I think I can speak confidently on behalf of the government that we hope there won't be. At the same time, there has been no strike called as of right now. This motion, to me, is clearly premature.

On another note, we as members, Liberal, NDP, independent or government, have a right to access this facility. I don't care whether there's a demonstration, whether there's a strike, no matter what's going on outside, we as members have the right to access, as does the public, this facility, strike or no strike. As well, we as members have a responsibility to continue to govern the province of Ontario regardless of a strike by OPSEU.

I'm suggesting that this motion be defeated, and I'm suggesting that for a number of reasons that are very clear to me. I'm a little surprised, actually, that the opposition would be so willing to throw in the towel and quit working as a result of an OPSEU strike.

Mrs Caplan: That's not what we said.

Mr Ron Johnson: That is what you're saying. What I'm suggesting is this: We have a responsibility to the people of this province to continue to work each and every day, to continue to govern and to continue to do our jobs as MPPs. I would suggest that we reject this motion and that we continue to do what we're paid to do, and that's to continue with the committee hearings, and that we do everything we can—if you want to talk to the legislative committee about what we can do for security for access, now that we can talk about, if you want to talk about what we can do to make sure the public has access to the building in the event of a strike. There are a number of entrances. There's a tunnel entrance from across the road.

Mrs Boyd: Not for the disabled.

Mr Ron Johnson: I am saying that there are options out there and we have to explore them in terms of right to access. But I'm not prepared to vote in favour of this motion and allow the number of weeks we've done in committee work to be delayed as the result of an OPSEU strike.

Mr Leadston: I agree with my colleague Mrs Boyd in the sense that this process has been very important, very interesting and very emotional for many of the groups that have appeared before us. When we started this process—perhaps some are more knowledgeable than others in terms of the intricacies of the rules of this particular committee, but I believe that all the parties agreed to the committee times and the commitment and the process. I believe there's a clear understanding in terms of the quorum of this committee. I also understand that the resource staff that has been with us for these weeks and will be into the next few weeks are not unionized members. Obviously, we are not unionized members. They will be here on Monday.

I'm not sure what will occur today, tomorrow or Monday in terms of forces beyond my control or capabilities. I think it would be a dereliction for myself or for any member of this committee not to be present on Monday to continue the process. People have made submissions on behalf of many hundreds and thousands

of people anticipating that this process would continue, that there would be dialogue and obviously clause-by-clause, that process, next week for an outcome, for a decision from this committee. I don't think we should necessarily rely on outside forces or occurrences beyond the capabilities of this committee.

Our mandate is to this committee and to our constituents and to the citizens of this province. We have a responsibility as members of this committee. We assumed that when we were elected, and I think we have to adhere to those principles and be here on Monday at a time to be determined, I believe, by every member.

Mr Marchese: Of course we anticipated that the government would say what it's saying. And yes, we agree that the government needs to continue to do its work. That's the function of government, and we accept that. We're not throwing in the towel and that's not what either of the two speakers said, either for the Liberal Party or my colleague; that's not what they said.

We are quite willing and happy to continue with the work we've begun, but there are a few things that people have mentioned. One is that people need to have access to this building, and we know a number of people, particularly those who are disabled, who may not have access, and they, I am convinced, will want to come and see and hear the clause-by-clause once we get into that. That's an issue.

Another is the issue of safety, both for the people who want to come in and for anyone who might want to have access to this place. Because, as my colleague said, these things are highly charged, sometimes it can be a problem and it can get out of hand. We hope it doesn't, nobody wants that, but it can get out of hand.

The question is this: If there is a strike, is there something else this committee wants to do or could do? The option that was suggested is that we meet in a different site. I think that's a useful suggestion that you might want to consider, so that the work continues—we are there to work because we want to—and we ensure the safety of everybody and we ensure access for everybody who wants to hear these proceedings. For some of the members who haven't spoken, if they're going to reject this motion, which I suspected they would, at least consider that we as a committee have other options, that we do have the resources to make other options. That other option is to meet somewhere else where we can continue this work.

I hope the members would consider that, because I think that's reasonable and it makes sense and it would allow us to continue with our work.

Mr Michael Brown: I think it should be made very clear that we're saying we want to work and want to be able to continue with the work of this committee and we think that can happen. But given the possibilities, we are attempting to codify what is the actual practice of committees around here. The Chair normally does not recognize a quorum unless one member of each party is here. We are saying that there may be some reasons, whether of safety or otherwise, that prevent some members from being here.

In light of that, I think this is a very reasonable situation. The opposition is trying to present to you some options on how this committee can continue. I can't

imagine that on Monday this committee could meet with no opposition members present and a government would be arrogant enough to go through the clause-by-clause consideration without an opposition member here. We want to work. We just want the committee to provide the opportunity for us to be able to do that under what could be difficult circumstances. Hopefully, there won't be difficult circumstances and there won't be a problem. We really don't understand what the government's problem is here.

Mr Ed Doyle (Wentworth East): I checked myself to see whether we could hold it at another location, and it was my understanding that we can meet somewhere else. However, what is to say that whoever is on strike, should a strike occur, will not remove and set up a picket line in another location, in which case we're presented with the same problem? I don't think we're going to solve anything by changing venues. If we're inform the public that we're somewhere else, the people who want to attend the committee, a picket line can be moved as well. So the same argument can be given.

Mr Ron Johnson: I want to address what Mr Brown was saying. I take exception to his saying that somehow this government will come in here, sit on this side and deal with this committee without any opposition members. I suggest to you that if we can make it, so can you. It's that simple. As far as I'm concerned, it's a security issue. It's not an issue of whether this committee should continue; it's a security issue, and security is charged with the responsibility of making sure we get in this building, and the public.

I would add that the wheelchair access, the one you're concerned about for them getting in, is at the rear of the building. We've seen a number of demonstrations, some of them violent, but that entrance is always open.

Mrs Boyd: No, it is not.

Mr Ron Johnson: It has been since we've been here, anyway. I have not seen any demonstrations in front of there. At the end of the day, it's a security issue and it should be taken up with security. I'll tell you, Monday morning I'm coming in and I'm sitting right in this chair and I'm going to be ready to sit at this committee meeting.

1540

Mrs Boyd: Mr Chair, I did say that security was only one issue.

Mr Johnson is quite wrong. In fact, the disabled entrance has been closed on a number of occasions when there have been demonstrations. I had occasion to write to the Speaker of the House about the fact that disabled people were unable to get around in this building, get in or out, when the demonstration happened on the throne speech day and when the demonstration happened on the 29th. You need to know that is not the case.

Mr Ron Johnson: Well, all entrances were closed, every one of them.

Mrs Boyd: What makes you think they won't all be closed on Monday, if this all occurs? We all are of a like mind. We all hope it won't occur. We all hope this situation will not occur and that the parties will continue to negotiate in good faith. That's a hope we all share.

But we also said that the security was only one issue. While it may not bother Mr Johnson to cross picket lines,

there are other members of this Legislature who might find that a difficulty, and he needs to keep that in mind.

If we were to go offsite and, as Mr Doyle suggests, there were a picket line, it would be an informational picket only because the people would not be picketing their place of work. An informational picket is a very different issue than a picket that is a sanction against an employer. For example, if we were in a private location which was a hotel, OPSEU does not have a union in a hotel and all they could do would be to mount an informational picket, and it's a very different situation than crossing a duly constituted strike picket line. That is a very different issue. While you are right—yes, it could be picketed—it is a very different situation in terms of the kind of picket it is and the kind of issue of conscience it might be for some members of the two opposition parties.

Mr Ramsay: I appreciate the committee having discussion on the motion I made. Mr Johnson, say, for whatever reason, you were able to get in in the morning—maybe because you got in before there were pickets or demonstrations going on and maybe the majority of the government members did too—and say, because I was travelling from the north, I was delayed or took a later flight, just didn't get here before and now there were more people here and it really became a security risk for me to try to get through, whether I wanted to or not.

I just don't think it would be fair under the circumstances that the deliberations of this committee, which is the culmination of all the input we've had over the last few weeks of hearings—we've travelled across the province, we've heard people here. We will be ready, as the other opposition party will be ready, to move amendments and to vote with the government on some of theirs and I'm sure maybe vote some against some of theirs, but to start that work. It's necessary that we all be here. We've all heard people, we've all had ideas, and under normal circumstances we would expect to be here and show up for work whenever the committee agrees to set that time, and we'd be here. But I'm anticipating that there could be some extenuating circumstances next week that we all would rather not see happen at all, and I think we need to make some sort of contingency plan.

My motion was just to try to anticipate that and prevent the government working on its own without opposition members if we couldn't get in under those circumstances. I am quite open to another venue also and have no problem in crossing an information picket at a non-workplace. If we could make that arrangement, that's fine. We'll see you there at 9 o'clock Monday, if needed.

Mrs Johns: I just want to add one thing to the comment Mr Brown made. I know I am the only member here, except for Mrs Caplan—it was on Bill 26, but I want to remind the members that it wasn't a problem for the NDP and the Liberals to vote when there were no Conservatives in the room during Bill 26. You felt that was okay to do, and there was a vote that came about when there were no Conservatives in the room and we were therefore pushed into something we didn't want to do. That's my experience with committee, and I just wanted to draw that to your attention, Mr Brown, that your Liberal colleagues voted in a room when there were no Conservatives there.

Mr Guzzo: That was then, this is now. The rules change.

Mrs Johns: Yes, it can't be the same.

Mrs Caplan: I would hope, Mrs Johns, that you're not comparing Bill 26 to Bill 19.

Mrs Johns: I'm comparing what you said about the ability to vote when no other people were there.

Mrs Caplan: Standard procedure for committee—and I've served as a committee Chairman; I've been here for almost 11 years now—is that the Chairman does not commence the meeting until there is a representative from each caucus.

Mrs Johns: So you took advantage of the fact that we had a Chairman to do it to us in Bill 26?

Mrs Caplan: No, Mrs Johns.

The Chair: One at a time, please.

Mrs Caplan: No. What I'm telling you is that that's for the meeting to commence. After a caucus requests a time out, the committee reconvenes at the call of the Chair and it is the obligation of each caucus to make sure they have someone there at that point. Nothing happened that was unusual about the proceedings of the committee under Bill 26. What was unusual was Bill 26 and the process the government engaged in. But nothing that happened to you or to your caucus contravened any of the rules of precedent of this House nor the standard procedures for the way committees operate.

Committees usually do not have the tensions surround them as they did under Bill 26, and I think, notwithstanding your newness here, you would realize what an unusual situation there was in Bill 26, where many of the normal courtesies of the Legislature went by the way. This, I would hope—

Mr Ron Johnson: This is now.

Mrs Caplan: No, no. It's not a question of this is now. Listen. What I'm telling you is that the procedures under Bill 26 were all appropriate and correct. She is suggesting that there was—

Mr Guzzo: She was born on a Saturday, but not last Saturday.

The Chair: Mrs Caplan has the floor, Mr Guzzo.

Mrs Caplan: I'm telling you that the fact your caucus didn't come in when they should have following a recess was their responsibility, not the Chair's and not any other member of committee's. And that doesn't detract from the fact that under normal circumstances committees do not begin at the start of every day until there is a representative from each caucus. That's apples and oranges. We are not talking about similar situations, Mrs Johns.

What this debate is about, frankly, is anticipation of an event that we all hope will not occur, trying to facilitate the work of this committee continuing with the kind of importance we all attach to the issues before us. It's a very reasonable motion that's before us at this time. It has nothing whatever to do with changing any of the procedures of this committee. It supports a custom that is and has always been in place, although not formalized; it is something that has always been in place.

While I understand Mrs Johns's anxiety, nothing happened to her that was in any way unusual around this place, and we are not asking for anything now that is unusual in this place. It is commonplace for committees

to anticipate events and try to make arrangements to accommodate that.

Mr Ron Johnson: Just come in in the morning and sit down.

The Chair: Mrs Caplan has the floor, Mr Johnson.

Mrs Caplan: I really don't understand what your anxiety is about this. This is a thoughtful, serious suggestion to allow the committee's work to continue. I must admit I'm taken aback by your reaction, Mrs Johns.

Mr Marchese: Mr Chair, I know that Nandita Sharma's here for the next deputation. I think we've made sufficient arguments on this particular motion. There's probably going to be another motion with respect to going offsite, which is a different motion, so I'd recommend that we move to the vote on this one and move on to the deputation.

The Chair: He is asking for the question. All in favour of calling the question? Carried. All those in favour of Mr Ramsay's motion?

Mr Michael Brown: Can we have a recorded vote.

The Chair: We will record it.

Ayes

Boyd, Brown (Algoma-Manitoulin), Caplan, Marchese, Ramsay.

Nays

Doyle, Fox, Guzzo, Johns, Johnson (Brantford), Leadston, Parker.

The Chair: The motion is defeated.

Mr Parker: A motion, Mr Chairman: I move that this committee, when it reconvenes, reconvene at 10 o'clock Monday morning in room 151.

Mr Marchese: Can I recommend that we deal with the other motion after the deputation has been made?

Interjection: The motion is on the floor.

Mr Marchese: Can I ask the mover to simply withdraw it so that we can move on with the deputation. The deputant is here. We'll deal with that afterwards.

The Chair: Mr Parker, there has been a request that you table your motion. If you refuse to or you do not accede to that request, I understand that we will then have a vote on the tabling motion. What would you like to do with your motion?

Mr Parker: I move that we adjourn for a brief caucus.

Mr Marchese: Can we deal with that after we've heard the deputants?

The Chair: There's a motion before this committee for a recess.

Mrs Caplan: They can do it at any time. They don't need a motion. Why don't you just say you'll deal with the whole thing at 5 o'clock or sooner, if possible?

The Chair: How long are you talking about?

Mr Parker: Five minutes.

The Chair: We're recessed for five minutes, and we will appear back here at 4 o'clock.

The committee recessed from 1551 to 1558.

The Chair: We're resuming. There is a motion on the floor made by Mr Parker. There was a request from one of the opposition members that he defer his motion and, Mr Parker, do you have an answer to that request?

Mr Parker: I'm happy that consideration of this motion be put over until after this deputant has spoken.

The Chair: Thank you for your cooperation.

NATIONAL ACTION COMMITTEE ON THE STATUS OF WOMEN

The Chair: We can now proceed with a submission, the National Action Committee on the Status of Women.

Ms Nandita Sharma: My name is Nandita Sharma. I am a member of the executive committee of NAC.

As I am sure you are aware, the National Action Committee on the Status of Women is the largest national feminist organization with currently over 600 member groups. In the last decade, NAC has witnessed a deterioration of the status of women in the areas of economic, social and political participation.

Violations of women's rights are found in their home environment as well as in systemic legislation, policies and institutions. Of particular concern to NAC is the plight of the marginalized and vulnerable in a society which increasingly emphasizes survival for the fittest.

Those that are considered as weak and frail, according to some perceived objective, western medical assessment of mental and development functioning, are shunned further to the margins.

Among the marginalized are older women, women of colour and women with physical or developmental disabilities, as well as women that are psychiatric consumers or survivors. Being victims of multiple forms of discrimination, ie, sexism, racism and ablism, these groups of women are often easy targets of abuse and exploitation, not only in their own homes by family members and caregivers, but also in institutions by service providers and health care professionals.

In spite of their limitations, the existing Advocacy Act, Substitute Decisions Act and the Consent to Treatment Act provide the means for these vulnerable women to assert their power and exercise their rights to make decisions for themselves and protect their personal wellbeing against abuse, yet the present Ontario government is effectively stripping away the little gains that these women and our society have made by proposing the Advocacy, Consent and Substitute Decisions Statute Law Amendment Act, Bill 19.

In NAC's view, Bill 19 represents a regressive step for Ontario by entrenching the inequities in power between these women and their oppressors. These women are essentially shunned to a world of silence, even in the face of abuse, with little recourse. The Common Sense Revolution launched by the Progressive Conservative Party of Ontario is built upon a world view in which responsibility for ensuring collective good is shifted from the government to individuals. Not only were Ontario voters promised an income tax reduction but also a recognition that more control over their social, economic and political environment would be placed in our own hands. Unfortunately, this promise has already been broken by the introduction of Bill 26, the omnibus bill, which gives immense power to the government at the expense of individual rights. The present Bill 19 represents another effort by the government to erode individual

citizens' rights. This time, however, these individuals are among some of the most vulnerable groups in Ontario.

NAC would like to point out to the Ontario government the glaring inconsistency in its actions with its own purported principles. If the government truly believes in upholding individuals' rights, Bill 19 should not have been introduced. If the government believes that individual rights should only be protected and guaranteed for some and not all the people of Ontario, then the government should be prepared to explain this and take the consequences for such unfair and unjust actions.

Ample examples can be found in the bill to support NAC's position on Bill 19. The following are highlights of some of the serious concerns we have:

First I'll start with the Advocacy Act. While NAC recognizes that concerns have been made in the community about the operations of the Advocacy Commission, it is undeniable the functions that the commission provides are essential to protect the legal and social rights of the vulnerable individuals. The act was developed with support from consumers' groups that suffer from a lack of protection of individual rights from institutional and legislative intrusions. Rather than addressing the roots of the concerns by enhancing the resources of the commission so that timely and adequate response can be provided by the advocates, the Ontario government has chosen to repeal the act and eliminate the commission. While the government is in the process of finding alternatives to the Advocacy Act, it is irresponsible for the government to take away the protection of the vulnerable from intrusive measures that infringe upon their rights to liberty and security. NAC therefore recommends that the Advocacy Act should not be repealed.

In regard to the finding of incapacity and rights advice, we feel that the Health Care Consent Act, sections 18, 38 and 55, denies the right of individuals to be informed when they have been found to be incapable of making decisions about their own treatment by the health practitioners. Such denial also applies to others who may be found incapable of making admissions or personal assistance plan decisions. Bill 19 also takes away their right to rights advisers to provide them with advice regarding their treatment or admission. Consequently, they also lose the right to be advised of possible appeals.

It is unthinkable that in a democratic country some of us can be moved into institutions without even being informed. It is highly questionable whether any public interest in protecting individuals from inflicting harm upon themselves can be served when such fundamental human rights are violated. Powerlessness over one's own personal health and own environment only reduces possible chances of recovery for those in real need. For others, where inappropriate treatment or admissions have been applied, the mental and physical aggravation will greatly affect their long-term wellbeing. Even if concern for human rights is not high on this government's agenda, the government should consider the economic implications associated with this provision when the costly option of institutionalization can be freely chosen by health practitioners against the wishes of individuals. NAC therefore recommends that health care practitioners and evaluators should be required to inform the persons

found to be incapable. We also recommend that rights advice should be restored in respect to treatment, admission and personal assistance plans.

In regard to emergency treatment, section 23 of the Health Care Consent Act permits emergency treatment without consent of an incapable person when communications cannot be made to seek consent or refusal from the person due to language barriers or other disabilities. The lack of access to appropriate linguistic and cultural services, including assessment, treatment and other forms of support, has already caused great harm to the cultural and linguistic minority communities.

Within our Eurocentric primary and mental health system, people of colour, particularly women, are often subjected to intrusive medical and psychiatric treatment that contradicts their religious, cultural, spiritual practices and beliefs. It is appalling for the government to condone such practices. NAC therefore recommends that no emergency treatment should be provided unless the health practitioner is certain that the individual is not objecting to the treatment and is not aware of a prior competent wish to not have the treatment and is not aware of an authorized substitute who objects to the treatment.

NAC is fully cognizant of the fact that such recommendations do not adequately protect individuals' rights. Anti-racism and anti-discrimination policies in the health care setting should also be in place to ensure compliance of policies and operational procedures, taking into consideration the diversity and needs.

Employment equity in the health care system to ensure diversity of representation among the practitioners is another part of the total strategies. Training of the practitioners to be culturally competent is also needed. Given that the Ontario government has repealed the employment equity legislation and eliminated anti-racism strategies, the protection of individuals' rights against inappropriate treatment becomes an even more challenging task.

In regard to the power of service providers, in the amending act, subsection 14(3) and subsection 35(3) concerning substitute decision-making, the prohibition against the appointment of service providers, including health care or residential, social training or support service providers to be the guardian of person or property, is in effect lifted.

The new sections in the act allow the court to appoint the office of the public guardian and trustee only as a last resort when there is no other suitable available guardian willing to be appointed. In real life many service providers, particularly the unscrupulous ones whose primary concern is monetary gain, are more than willing to be appointed and available for isolated individuals who do not have any support or option.

The thorough study conducted by Professor Ernie Lightman in the early 1990s into the operations of unlicensed homes exposed blatant exploitation, abuse, neglect and illegal actions by some group home operators. Similar situations are found in other long-term-care facilities. Community agencies that serve seniors, especially women, have confronted situations where group home operators illegally confine seniors and deny them basic personal care purely for financial gain.

Appointing the service providers as guardians puts them in clear conflict of interest and exposes the individuals to further abuse and control. NAC therefore recommends that service providers receiving compensation for providing services to incapable persons should continue to be prohibited from becoming either guardians of property or of person.

I will provide written copies of our submission to this committee shortly.

1610

Mr Ramsay: Thank you very much for your submission. You have brought forward many points that we in the Liberal caucus are also very concerned about. We think it's very important that a patient be informed when a decision is made—I think that's absolutely paramount—and also that rights advice is given. I would like to ask you, because we're not sure how and what mechanism should be employed to give rights advice, what sort of process you would like to see in place that would provide rights advice once a decision of incapacity is made.

Ms Sharma: The definition in the MHA of a rights adviser is a person or a member of a category of persons other than a health practitioner or a person who is employed by a health practitioner or health facility designated by the minister to perform the functions of a rights adviser under the act in health care facilities, and that is what we would also like to see. What we are very concerned about is the clear conflict of interest between the appointment of rights advisers who are also receiving financial compensation in regard to the provision of services. We see that as a clear conflict.

Mr Ramsay: The other area you talked about is actually a concern, and I'd like the ministry to note this. Coming from a rural area, if somebody is transferred to another facility, that could mean possibly out of their community. Quite frankly, I'm not so sure I'm happy with just that ability to transfer somebody to another community without another decision being taken and consultation being taken. Certainly I would want a safeguard put in place that would prevent somebody from being taken from their community without the proper consultation taking place. I know there are many people who live in rural communities across the province where that could really happen. So I thank you for bringing that forward also.

You mentioned another important area. However we replace what is being repealed through Bill 19 in regard to advocacy, you're very right in saying that there's got to be training. It's going to have to be brought forward, both rights training and also cultural training, to the people we will entrust in future to be advocates. Whether it's a volunteer network, like the government is saying, or it's going to be some sort of downscaled paid advocacy group, on a regional basis or across the province, there certainly has to be a concerted effort that there be quality control, that there be training and that there be accountability.

I appreciate that you bring those points forward and welcome any other comments you might like to make on that.

Ms Sharma: Just in response to two issues, we at NAC are obviously very much concerned with the

erosion of health services across the provinces, and I share your concern that that is of particular importance to people who may have to move outside of their communities to receive proper health care. That is something we'd also like to see the provincial government deal with. On a federal level, with the imposition of the CHST on April 1, we can only see the situation worsen. We would like to see the government very strongly oppose the implementation of the CHST.

Second, in terms of the notion of volunteer rights advisers, advocacy groups have been asking for some time that volunteers be able to serve in a capacity as rights advisers, but we would not like that to come at the expense of proper training, at the expense of proper monitoring of these rights advisers. We would like to see the potential for conflict of interest be eliminated, particularly in the case of women, when we see that either providers in the home or providers in health care institutions oftentimes are also the abusers of women. So we would like to see many, many different potentials for conflicts of interest to be eliminated in that as well.

Mr Marchese: Just a few quick questions, and we welcome you here today. On the issue of emergencies, there's some language in the bill that speaks to making efforts to try to deal with the language situation or language problem or communication problem in general. There are difficulties often in emergencies in terms of how to deal with that but it does say, after you've made some effort, you should move on to deal with the emergency problem.

One of the deputants a while ago made the suggestion that we try to make an effort to get an interpreter, which could be a linguistic interpreter if it's an issue of language or a sign interpreter for dealing with sign, or however else people can communicate. Do you think that is a useful suggestion?

Ms Sharma: I think that's absolutely fundamental. If we are talking about the fact that people must, in a democratic society, have the right to appeal or question and be properly determined to be truly incapable of making decisions regarding themselves, then all of the necessary procedures to ensure that that is happening have to be included. Whether that's language provision, sign-language provision etc, that has to be taken into account. It seems to me that this government is moving absolutely in the opposite direction, that individual rights are actually being eroded through Bill 19.

Mr Marchese: I didn't hear you, I may have missed it, but I'm not sure you spoke about the Advocacy Commission, which they are obviously eliminating as well as the Advocacy Act and rights advisers. The Advocacy Commission of course was going to deal with many things had they had the opportunity to do it. They would deal with education, training, community development, they would deal with systemic advocacy and, of course, rights advice.

I personally feel that that was a critical function of the particular board developed after many, many years of discussions with a lot of people in the field, and I see the state as having an important role to play in that regard. The government disagrees with that because they think the state should not be involved in this sort of thing.

Have you formulated an opinion around what the elimination of the Advocacy Commission might mean to people you were speaking about?

Ms Sharma: I think with the elimination of the Advocacy Commission we're really talking about a fundamental erosion not only of individual rights but also of community values, which is another glaring inconsistency between the principles stated by the government and the actions that they're following through on. With things like the Advocacy Commission and with some of the other bodies that have already been eliminated, we see the government moving very strongly in that direction.

We would only encourage the government that if it believes that only some people in Ontario deserve basic rights and access to certain services, then it should make that clear and apparent instead of hiding behind the guise of taking away individual rights on behalf of community values and eroding community values by taking away individual rights at the same time.

Mrs Boyd: That really is the point, isn't it? It's the cumulative effect of all these things on women, who, although they're the majority of the population, have never enjoyed the rights that a majority in most communities usually enjoy.

When you look at what has really happened over the last few months in terms of the erosion of people's economic ability to sustain themselves and their families, in terms of the kinds of added burdens that you see with the payment for the drug benefit plan, the real difficulty around many of the community services that have been defunded or had their funding so severely reduced, the problems in terms of getting legal assistance in the courts and current threats to the legal aid clinics and so on, when you go through the whole list, the cumulative effect on women and children and anyone else who is marginalized and vulnerable, it's a really enormous effect, isn't it?

Ms Sharma: Yes, and we are concerned particularly with the erosion of legal aid assistance in regard to all of the various aspects around ensuring that when someone is classified as incapable of making decisions regarding their own health and their own property that that truly be a fair decision, and with erosion, I think you're absolutely right, it's the culmination of the things. It's so hard to deal with Bill 19 without having to deal with all the things that have come prior to that.

1620

Mrs Boyd: Because if people don't know their rights and they don't know their right of appeal and they don't know that there is the availability of counsel, they have no one to represent them, this really becomes a very serious issue, doesn't it?

Ms Sharma: Especially with the proposal to start charging people who might want to appeal a decision made by a health care practitioner in classifying them incapable. Asking those people to pay for access to materials they would need to launch an effective appeal seems also unconscionable in a democratic society.

When you're considering asking health care providers to also become the rights advisers, there seems to be a clear conflict of interest. If the rights advisers are also the same people who are holding the actual materials you

would need to launch an appeal against that designation, it's a very vicious circle. Unfortunately, the person is in a very vulnerable position, either through mental or physical illness and that's the last time that you need all of these added pressures in dealing with this.

Mr Ron Johnson: I want to thank you for your presentation to the committee. You were pretty adamant that you're opposed to the repeal of the Advocacy Act, but I want to say that there have been a lot of groups that have appeared before us that understand why we're repealing the Advocacy Act, including a number of groups, I might add, that do provide advocacy. They understand that bureaucracies don't necessarily do what we all want them to do and that the best advocacy service isn't necessarily provided by a big \$18-million bureaucracy, and we feel there are better ways to do that.

I would also suggest that the current act is very adversarial and very confrontational. Even Ms Caplan, I believe it was November 27, in the Legislature said that the current act was very confrontational and adversarial and something had to be done. I would guess that's probably one of the reasons why they too were going to repeal the act.

What we're looking to do now is come up with a plan that is going to incorporate better use of families, friends and existing organizations. Even the O'Sullivan report clearly stated that the government's role should be that of support and education and we're looking at ways we can do that as a government.

We've been criticized somewhat as well for not already having a plan in place, but I can tell you that had we come up here with a plan, we would have been criticized for not consulting and going through a committee process first. So what we're doing now is going through that process to find out ways from people like yourself that we can incorporate a long-term plan for advocacy, systemic and otherwise, to help the vulnerable in society.

I would suggest that you are in fact an advocate. That's what you do by virtue of being here today; you're proving yourself to be a worthy advocate for the people you represent. How do you see yourself and your organization becoming part of the plan we want to develop as a government?

Ms Sharma: I understand the criticisms of the Advocacy Commission and some of them were well founded, and I understand that there are other models for advocacy that rely more on volunteers and family members and that don't require the centralization of all of these functions. However, the government itself must play a role in advocacy by supporting the work of existing and future individuals and organizations which advocate for people with disabilities.

There must be publicly funded advocacy for vulnerable adults in Ontario. There must also be a licensing body, as was mentioned earlier, for advocates. Even when you were talking about advocates who are volunteers or family members, we have to ensure that those advocates have the proper training, which includes also being able to be culturally competent, which includes linguistic skills in the body of volunteers you're calling upon.

For the public to have confidence in those who call themselves advocates, the government must support a

body which can establish a training curriculum for advocates which sets standards for their conduct and provides official recognition to advocates who have completed the training and agree to abide by the standards. In addition, advocates cannot help people in the most desperate situations unless a statute grants them a right of access, for example, to people with disabilities in unregulated boarding-homes. In terms of those, those are the thoughts we have developed so far on it.

The Chair: I thank you very much, you and your organization, for making the presentation today.

Mr Parker, I just need some clarification. I'm not certain whether you placed your motion down after this particular deputation or to the end of the day.

Mr Parker: Regardless of what I said, Mr Chairman, I'm quite happy to put consideration of my motion over until all the deputations have spoken. I understand we have two more to appear before us.

The Chair: Fine. Thank you very much, Mr Parker.

Mr Parker: I understand Mrs Johns has some amendments.

Mrs Johns: Mr Chair, I'd like to table the government's amendments to both the SDA and the Health Care Consent Act. We also have in this package a letter that has gone out to all of the colleges. Plus, we have comparisons between the old acts and the new acts because that was requested from both the SDA's standpoint and the CTA.

From our standpoint in the health care, I just wanted to suggest that there were 81 motions that we're moving. Forty-three of those motions involve a single word where we have either changed the word "resident" to "recipient" or "service" to "plan" as a result of people who have asked for that during their presentations, so I hope not to hear, "There are 81 amendments and look how big they are." We believe we're strengthening the bill and it proves that the government has listened to what's happened over the last three weeks.

Mr Marchese: Hear, hear.

The Chair: I'm certain you won't hear that, Mrs Johns.

Mrs Johns: I'll guarantee it.

OLDER WOMEN'S NETWORK

The Chair: The Older Women's Network, Ms Turner, welcome. Thank you for attending today.

Ms Evelyn Turner: The Older Women's Network thanks you for this opportunity to speak. Our membership for the most part is composed of laypersons not learned in the law. However, as seniors and some of us are older seniors in our 70s and 80s, we have witnessed and experienced the evolution of change in the fundamental values under which our country functioned from early in this century to its approaching close. Over time, we have contributed to the achievement of a sharing and caring society of which we are all very proud. We speak from our emotions.

After much debate, soul-searching and discussion, participated in by many sectors of our society, legislation was developed which would put our worries to rest regarding loss of control over decisions that might be

made on our behalf and which might be contrary to our wishes.

The repeal of the Advocacy Act, the pending amendment of the Substitute Decisions Act and the repeal and replacement of the Consent to Treatment Act are of enormous concern to senior citizens. The purpose of this presentation is to make suggestions for some changes with the hope this committee will view them with favour.

The Advocacy Act, 1992: Our expectations were raised to dizzying heights. At last we were not just being listened to and patted on the head. Our innermost fears were to be validated and allayed with the creation of a new tool, the Advocacy Act.

As we age, we become more and more vulnerable to the onset of catastrophic episodes, for example, stroke, diabetic coma, Alzheimer's disease. No doubt all the members of this committee are very familiar with these debilitating conditions, but for a moment just imagine yourself the victim of a stroke and unable to speak or move. Your mental faculties are intact, but your body is unable to make its normal responses and to communicate your wishes. Helplessness is universally feared by all of us.

As you know, the Advocacy Act would provide for rights advice and advocacy services to be made available to the vulnerable, and created the Advocacy Commission to train people to assist those in need of such services. We urge that alternative sources be used and/or developed to fill the gaps left by the repeal of the Advocacy Act.

The Advocacy Commission has recommended that the government fund "a non-profit charitable corporation, the objects of which should be community development, education, training and systemic advocacy." It proposes that such a corporation be governed by "a board whose members are people with disabilities." To this we would add "and seniors and other affected members of the community."

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To augment government funding, the corporation could be mandated to raise funds privately, sell services and increase its income in other ways. This is a practical approach to dealing with present fiscal realities.

We do hope that you have had the opportunity to read the brochure in which the Advocacy Commission has illustrated the efficacy of providing a cost-effective way to deliver a much-needed program to communities throughout Ontario.

We also suggest using the resources of existing community legal clinic systems, such as the Advocacy Centre for the Elderly, which already provides similar services. With elder abuse on the rise in these difficult times, adequate funding would ensure the continued availability of advice and advocacy services as the need increases.

The Substitute Decisions Act, 1992: In the amended Substitute Decisions Act, words and phrases that brought us comfort, such as "advocate," "rights advice," "explain the significance and effect of" have been expunged. We feel threatened by the withdrawal of advocate support and rights advice and the possible lack of requirement to be told what is planned for our bodies. Surely the expectation to be told the nature and possible consequences of a

treatment or change of venue is not unreasonable. Wouldn't you like to know if this were happening to you?

Added to our feelings of insecurity is the possibility of not knowing how our property will be administered in the event that we are deemed incapable.

An example of this is the repeal of subsection 16(2) under section 10 of the amendment act. Relative to the public guardian and trustee as statutory guardian of property, subsection 16(2) required that before assessment took place the assessor would first have to explain to the person the purpose of the assessment, the significance and effect of a certificate of incapacity and the person's right to refuse to be assessed.

Other sections throughout the existing act are also repealed in the amendment act which allow actions to be taken without such conditions being fulfilled. See subsection 30(6) of the amendment act repealing sections 10 and 11 of the existing act, which relate to authority of validation of power of attorney for personal care. In this case, the requirement of the attorney to explain to the grantor what was happening is eliminated.

We would very much like to see these requirements included under the circumstances described, in each case making it mandatory that the grantor be given such information.

We would respectfully suggest that the amendments to the Substitute Decisions Act and the new Health Care Consent Act must contain regulations that clearly define steps that must be taken to ensure that the instructions of the grantor of powers of attorney for property and for personal care take priority when decisions are being made.

When reading the Substitute Decisions Act as amended and the Health Care Consent Act, one develops a feeling of foreboding. There is an apprehension that the rug is being pulled out from under one's feet. In the matter of arranging for attorneys for property and for personal care who would carry out our wishes should we be unable to act on our own behalf, safeguards are being removed which would have prevented exploitation of our vulnerability. Thus, when our nuisance value increases, there will be a ready solution to the problem.

The Advocacy Act defined that:

"'vulnerable person' means a person who, because of a moderate to severe mental or physical disability, illness or infirmity, whether temporary or permanent and whether actual or perceived,

"(a) is unable to express or act on his or her wishes or to ascertain or exercise his or her rights, or

"(b) has difficulty in expressing or acting on his or her wishes or in ascertaining or exercising his or her rights."

The words "vulnerable person" do not seem to appear in either the Substitute Decisions Act, 1992, or as it is being amended. As a result, determination of capability relates only to mental capacity or incapacity. Other conditions, such as being deaf, being paralysed or being unable to understand a language, might render a person incapable of communicating decisions. This should be recognized in this legislation.

Subsection 66(12) of the existing act forbids the guardian of personal care to use or give consent to the

use of electric shock as aversive conditioning. Subsection 43(5) of the amendment act would permit such use if consent is given in accordance with the Health Care Consent Act, 1995. The use of electric shock treatment for such a purpose is absolutely rejected by us.

Section 50 of the existing act is repealed under subsection 32(1) of the amendment act. Subsections 50(3) and (4) deal with the use of force and permit assessment of the grantor and moving the grantor "to any place for care or treatment...and to detain and restrain the grantor in that place during the care or treatment." The provisions of the substitute section 50 of the amendment act are rather confusing and appear to place the grantor in a no-win situation. We wonder if this is the intent.

Subsection 57(1) of the existing act specifies that a person not be appointed guardian who provides health care, residential, social, training or support services for compensation. Then it is nullified by adding subsection 57(2.1), indicating that if no one else can be found, then the person described in 51(1) may be appointed the guardian of the person. The same situation exists relating to a guardian of property under subsections 24(1) and (2) and in the existing act as amended by the addition of subsection 24(2.1). This would constitute a conflict of interest.

Finally, subsection 6(3) of the amendment act repeals paragraph 3 of subsection 10(2), which disallows a child of the grantor to be a witness to the execution of a continuing power of attorney for property, and the same applies for a continuing power of attorney for personal care in the existing act, subsection 48(2). This could open the way to abuse, should the child see an opportunity to exert influence using the advantage of witnessing a power of attorney.

Health Care Consent Act, 1995: It would seem natural to assume that if a person is judged to be incapable with respect to treatment, admission and a personal assistance plan—Health Care Consent Act, 1995, sections 18, 38 and 55—he or she would be so advised in each case. A health practitioner or substitute decision-maker is expected to do so.

In these cases, a rights adviser would be appropriate to devote the time and energy necessary to make the person aware of the finding of incapacity and their right to appeal the assessment. A rights adviser would also make known to the person the facts of the assessment and that a substitute decision-maker had been authorized to make decisions on the person's behalf.

Those of us who have thoughtfully prepared living wills outlining in some detail the manner in which care should be given when we are unable to speak for ourselves are now worried that our wishes will be so easily overridden. Now is the time we seniors would really like to be told, "Never mind, everything's going to be all right."

The Acting Chair (Mr Ed Doyle): Thank you for your presentation. The Conservative caucus will begin questioning; you have approximately six minutes each.

Mr Leadston: We'll reserve the period.

The Acting Chair: You'll reserve the time and defer. Okay. We'll move on to the opposition, the Liberals.

Mr Ramsay: I'd like to thank you very much for making your presentation. Next week we are going to be

coming back somewhere—I'm not sure it's in this building—to be looking at the government amendments, which have just been tabled, and there will be amendments coming forward from the opposition. We will be looking at your submission and looking for advice in developing some of those amendments. Thank you very much.

The Acting Chair: Anybody else from the Liberal side? No? Okay, then we'll move it on to Mr Marchese.

Mr Marchese: Thank you, Mrs Turner, for your presentation. In your first page you talked about after much debate and soul-searching and discussion, many of you participated in many sectors of society in the legislation that we brought forward in our term, as an NDP government. I'm assuming that you agreed with the fact that we created the Advocacy Act—

Ms Turner: It was an excellent act.

Mr Marchese: —and the Advocacy Commission—

Ms Turner: Yes.

Mr Marchese: —and rights advisers, and also that they would have the ability as well to be able to enter a place where they understood or heard that there might be some abuse against a vulnerable person and that was a good thing. You agreed with all those things?

Ms Turner: Certainly.

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Mr Marchese: One of the things Mr Johnson said—and he's just stepped out for a few moments—was that if we had brought in a proposal, now that we're repealing the Advocacy Act and the Advocacy Commission and rights advisers—that if we had brought one we would have been criticized. Do you think that when they do come up with a plan, assuming they do, they should come back to this committee so that people like yourselves would have an opportunity to be able to comment on that particular plan, or do you think they should be able to do that without the feedback from people like yourself?

Ms Turner: We'd like to see the feedback. Actually, out in the community there are plenty of people with expertise, because we've been working for years on this and we've studied it in depth and we have a deep understanding of it. We'd be pleased to have some input in future legislation.

Mr Marchese: So—Mr Johnson is here, just to repeat it—you agree that if they do come up with a plan, they should bring it back to this kind of committee forum for not only the feedback of the opposition, but also feedback of people like yourself.

Ms Turner: Yes. In the first place, we'd very much like to know what would be contained in such new legislation, and we would welcome the opportunity to have some input.

Mr Marchese: We thank you very much for coming.

Mrs Boyd: I want to thank you very much too. You're quite right, your group has developed a great deal of expertise over the last few years and I know it's important for us to listen to that expertise, because you have access to the candid opinions of people you represent in a way that many of us might not, so it really is important for us to listen to you.

I think that one of the issues you present so persuasively is the whole notion of how very vulnerable people are and how many more people are going to become

vulnerable just in the natural demographic course of things over the next few years, and that the task of a community to try and maintain the ability of those people, to maintain their independence and maintain their dignity is going to become a larger and larger task, so rather than cutting services, we need to be looking at shifting some of our resources into that area. Unfortunately, the bill, by doing away with the Advocacy Commission, is taking exactly the opposite tack. Would you agree that's a real problem for you?

Ms Turner: Yes, and not only that, there's a real problem in expecting help to come from your own community. In my 70s, I have been a primary caregiver to my brother's widow, who's the same age as I am. You become burned out looking after two houses and finally having to see this person placed in a facility. It's emotionally draining too, because we care. Our children who are reaching middle age, they have their families and some of them, their children have children, so we really can't look to families like we may have done at the turn of the century. It just doesn't exist, the help from families, any more.

Mrs Boyd: And when it is there, when families are doing their best, there has to be a recognition that at some point they may not be able to continue to do that, and then both the person who needs the care and the person who has been providing the care need some assurance that the wishes of the person who needs care are going to be continued and that there's some teeth to that, because we all know of the tragedies where that has not been the case. It certainly gives rise to a lot of fear on the part of a lot of older people that they will not have control over their destiny, if in fact they don't have that kind of availability of advocacy people who can actually access them and find out the information and then take action on their part.

Ms Turner: That's quite true, because what I've been expressing is the feeling of my peers. They live primarily alone in apartments and they have no one to turn to when they're in distress or even if they're worried, and it's very reassuring if you know there is someplace you can go for advice, not so much that we might expect active advocacy or intervention, but we want to know what's available and what measures we can take to help ourselves.

Mrs Boyd: Of course, you wouldn't name someone as your substitute decision-maker if you didn't trust them, but it sure is a lot nicer to know that even if you trust them, there's someone who is able to intervene on your behalf if for one reason or another they either are not able or are not willing to carry out their responsibilities as you have instructed them.

Mr Ron Johnson: I want to thank you very much for your presentation. I just have a quick question. Did you take part in the ministry's stakeholder consultations?

Ms Turner: Yes.

Mr Ron Johnson: You did. It's funny, because I've listened to Ms Caplan and Mr Marchese talk about how we didn't consult and yet here we have somebody who was involved in the consultation process and there have been a number of other groups—

Mrs Caplan: Was she consulted before the legislation or after it?

Mr Ron Johnson: They get all riled up when you start telling the truth. That's the bottom line. You see, what I'm saying is that we have taken part in a lot of consultations and we're going through three weeks of consultation now, and what we really want to do is develop a non-intrusive, non-legislative approach to advocacy. That's really the role of the government. The previous legislation, as even Ms Caplan has said many times, was confrontational, it was adversarial. What we want to do is develop legislation that incorporates family, it incorporates friends, existing organizations, but we want it to be a non-legislative approach.

I'm glad to see that you took part in the stakeholder consultations, as many others did as well. We're going to take the information from that, we're going to take the information that we're getting from this committee and we're going to develop a real plan for advocacy, not this big bureaucratic boondoggle that was created by the last government. We're going to create a real plan that helps real people in need, and that's really where we're coming from.

I guess I want from you some sort of ideas perhaps, because we're still looking for some ideas, on how we can best use people like yourself within that advocacy plan, and groups like yourselves, through training, through education, through coordination, that sort of thing.

Ms Turner: The meeting I attended, it was really after the fact. We didn't really know how we could add constructively to the information that was already available, because many hours and weeks and years had been spent in discussing this and working out solutions. I think no act is perfect, and the Advocacy Act wasn't perfect, but it wasn't as confrontational as it was made to appear to be. We seniors really fully supported it, although we had suggestions too that would improve it in some respects.

Mr Ron Johnson: I think that as much as you're saying it wasn't really confrontational—you may be right. I didn't, quite frankly, have to deal with the previous act. I was fortunate that I didn't. I know, though, that a lot of people have come and sat right where you're sitting and said: "Yes, it was confrontational. It was adversarial. It pitted doctors against family, it did all of those things." I guess what we're trying to do is just to develop a plan that's user-friendly, that involves family, existing organizations.

I think you make a valid point when you say that you want to come up with some ideas that can contribute to the model that we come up with. I look forward to hearing all of the suggestions that you have because we really want to work together and come up with a good plan, because by no means, despite what the opposition wants to say, have we given up on advocacy. It's very important to us.

Ms Turner: We're very glad to know that.

Mr Ron Johnson: It's very important to us.

The Acting Chair: I understand, Mrs Caplan, that you still have about three minutes.

Mrs Caplan: Were you consulted or did you have an opportunity to meet with any of the ministers prior to the tabling of Bill 19 to discuss the changes that are being made to the health care consent legislation and to the substitute decision legislation?

Ms Turner: No, our organization didn't, to my understanding, receive any information.

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Mrs Caplan: Were you presented with any information from the government that would allow you to make suggestions to them before this legislation was done?

Ms Turner: I don't think there was opportunity for input, not before.

Mrs Caplan: The reason I'm asking that question is that I've been told by the ministers that they did consult, and we're hearing from the Vice-Chair of the committee that they did consult, and yet when I've asked groups and organizations if they were part of that consultation, they've said no. What we've heard from members is that was during the election when they knocked on the doors. So I guess the next question is, when your Conservative candidate knocked on your door, did you have a discussion about this issue with him or her?

Ms Turner: I probably wasn't home; I attend a lot of meetings.

Mrs Caplan: So you never had that discussion on the doorstep during the election either?

Ms Turner: No.

Mrs Caplan: The purpose of my questioning here really is to determine whether or not you were part of any meaningful consultation prior to this legislation coming in. It is also very normal, when a government says they're going to do something, that they consult, bring in their proposals and make the changes that are going to be made so people know what they're going to do. What Bill 19 does is repeal the Advocacy Act, and they're saying, "Well, we're committed to it, but we're going to talk about it."

Now the truth is, I believe that the existing Advocacy Commission as it was constituted by the former government was too expensive. I felt that it was not sustainable. In fact, there have been some very interesting proposals that have come forward for alternative models that I think would meet the O'Sullivan objective of a shared advocacy model that is affordable in Ontario.

I'm disappointed that we're dealing with the repeal of this legislation without having any idea about what the government intends. All we know is that Minister Mushinski has said there will be no new legislation. That's a concern, because how you can develop a model of coordination without having standards established by law, I don't understand, but I wait to see.

So I'm pleased to hear that you are participating in the consultations on what they're going to bring forward. I've listened very carefully when Mr Johnson says they don't know what they're doing—and I agree with him, they don't know what they're doing—and it'll be interesting to see what they bring forward. Now that we've heard from them how committed they are to advocacy, we're going to be waiting to see what they bring forward.

The Acting Chair: Thank you very much, Mrs Turner, for coming today.

PARKDALE COMMUNITY LEGAL SERVICES

The Acting Chair: Next is Parkdale Community Legal Services, Mrs Lilith Finkler. You have a half-hour.

Ms Lilith Finkler: I have to say before I begin that listening to all of you talk is much better than a sitcom; it's like real life action. I love it.

Mrs Caplan: If only it weren't true.

Ms Finkler: I need to say as another aside, since I know that all of you around this table are sensitive to the needs of people with disabilities that the wheelchair-accessible stall in the women's bathroom does not have a door. I don't know which of you around this table is responsible, but—

Mr Marchese: It's the government.

Interjection: Didn't the previous government take care of that?

Interjections.

Ms Finkler: Having made my preliminary comments, I would like to thank members of the standing committee for the opportunity to present this brief today. I am Lilith Finkler, a community legal worker at Parkdale Community Legal Services. I have been advocating on behalf of and in conjunction with persons with psychiatric histories in Parkdale for many years. A large proportion of my clients are current or previous patients at Queen Street Mental Health Centre.

In addition, almost 20 years ago, at the age of 17, I lived in a psychiatric treatment centre run by a local children's aid society. I witnessed a very traumatic rape. As a result, I became actively suicidal and was involuntarily detained in a psychiatric facility. Upon admission, four male orderlies ripped off my clothes and administered an intramuscular injection. This was for me a replay of the horrendous experience I had just witnessed a few days before; I freaked.

I was told nothing. No one explained the large needle, nor the medication contained within it. No one asked my permission to insert the needle into my buttocks. Worst of all, no one asked why I was so upset. I was so alone in my pain.

I did not understand why I was in the hospital until much later. Apparently, during the holiday season the staff were on vacation. Residents were all sent home. Children's aid did not wish to incur the additional expense of staffing the house for one person. The hospital administration agreed to keep me until the treatment centre reopened about a week later.

Today, therefore, I stand before you as both a survivor of the psychiatric system and as a legal advocate. Both my professional and personal experiences form my understanding of the laws under discussion.

I'd like to add, although this is not in the body of my brief, that I am not alone. There are many women who are survivors of the psychiatric system who are also survivors of sexual and physical abuse. In fact, a study done a number of years ago by Temi Firsten, who was a psychiatric social worker at Queen Street, indicated that 83.1% of the women in provincial psychiatric facilities in Ontario were either survivors of severe physical abuse as adults or severe sexual abuse as children. Imagine the psychological and physical impacts of forced treatment on

those of us who had already endured horrendous unwanted touch as children. I think it's important to emphasize that while the family can certainly be a source of refuge, it can also be a source of abuse, the very thing we need to escape when we enter a psychiatric institution.

Like many presenters, I come here with a visual aid, something to illustrate the issues pertaining to my submission. The last page of this brief is an image of the dilemmas all legislators face when constructing laws that govern our society. If you look at the back, it's a very simple picture. I'm by no means an artist, and I'm sure all of you will be glad to know that I don't aspire to be one, but it is an attempt to illustrate for those of you who are visual.

We all view the world through particularly coloured lenses. In this case, we view the legislation through a wish to support positive doctor-patient relationships. This desire is balanced by the need to enshrine the right to individual control; in other words, the security of the person. So on one side of our mouths are the statues of the Health Care Consent Act, Regulated Health Professions Act and the Mental Health Act; on the other side are sections 7 and 15 of the charter.

The limbs of this body provide procedural protections to those deemed incapable to consent to treatment to manage their finances. On the left are the ranking provisions of the Health Care Consent Act to ensure that a substitute decision-maker chosen by the incapable person will act in their stead. On the right is the insistence that previously expressed wishes when competent will be respected should the person become incompetent to make their own treatment decisions.

At the foundation of this legislation are the two legs it stands on; ie procedural protections to prevent potential conflict-of-interest situations. The Substitute Decisions Act currently prevents caregivers from becoming statutory guardians of property. This provision should not be removed. The Family Benefits Act, General Welfare Act, Old Age Security Act and the Canada Pension Plan Act all allow third-party assignment and control of funds without notification, assessment of capacity and/or right of appeal. The public guardian and trustee also assigns trusteeship to various service providers. Of course, what I'm going to speak about here are some of the difficulties with the implementation of the legislation already in place.

1700

As I work in Parkdale, a large number of the people I deal with are individuals who have been labelled with a psychiatric diagnosis of some sort and who live in boarding homes. Today boarding home operators often control tenants' funds. As a result of their power, some operators commit gross violations of human rights. Some operators force their tenants to sign over the whole FBA cheque rather than simply the portion for room and board. Some operators take the money they receive from the government and then force tenants to obtain food from a local food bank. Shortly after welfare recipients were cut back 21%, one of my clients was told that he could no longer bathe in his own home. In the cold winter winds, he was sent to the hospital for a shower. One pharmacist who operates a boarding home allegedly

collects FBA drug cards and insists that house doctors prescribe medication and that all drugs be purchased at his store.

In short, the proposed Substitute Decisions Act amendments would legalize abuses already taking place. The right leg displays the independent provision of rights advice. Changing the definition of rights adviser and allowing the hospitals to designate their own rights advisers endangers the very premise on which the legal system now functions; that is, if certain human rights are removed, the subject of these actions is entitled to be told why and to be informed of the appeal process if they disagree. The elimination of this procedural right could well be subject to Charter litigation should it be passed into law.

In addition to the abovementioned general comments, I would like to address a number of the other provisions that, in my mind, present specific dangers. I'm simply going to indicate for the record the issue and, since you all have in front of you the actual legislative referral number, I'll leave that.

(1) Use of the cattle prod for aversive conditioning. There is no reason to reintroduce substitute consent for the use of a cattle prod. Persons with development disabilities who self-injure can be assisted with a variety of other therapeutic interventions. Gentle teaching, for example, emphasizes the potential for a dialogic relationship between the person who self-injures and the person setting out to help them. In my mind, cattle prods are for cattle.

(2) The phrases "least intrusive" and "least restrictive" are value-laden terms with no litigated definitions. These words can be used to justify all kinds of aversive techniques. Certainly, if people want to ask me afterwards, I can elaborate.

(3) Section 32 of the HCCA, which allows the treatment of an allegedly incapable person prior to a Consent and Capacity Board hearing, is a violation of due process and natural justice. Treatment should not begin until a Consent and Capacity Board determination of incapacity is made. There is a presumption of capacity as there is a presumption of innocence.

(4) Section 44 of the HCCA, which allows admission to a long-term-care facility for a specific number of days without consent, may be an attempt to distinguish a temporary stay in a facility from a more permanent placement. There should, however, be mention of a specific, maximum number of days. As the legislation stands, if a person authorized a stay of 3,650 days, the equivalent of 10 years, for example, they would be exempt from the procedural processes described earlier in the same section. I do not believe this was the original intent.

(5) The PGT Act allows the PGT to charge for services. Many PCLS clients, unfortunately, have no ability to pay, being primarily recipients of family benefits or Canada pension. These statutes should include a provision that fees will be waived if they constitute undue hardship for a client.

(6) HCCA subsection 71(2), which implements one-member panels of the Consent and Capacity Board, should state the nature of the issues such panels will be

able to adjudicate. While this section may be an attempt to reduce costs while serving northern clients, it may also create a situation where those living in non-urban areas are routinely heard by one-member panels rather than three. This would entail a form of systemic discrimination against rural residents, who already suffer from a lack of appropriate treatment facilities and specialized medical personnel.

(7) The Consent and Capacity Board should always issue written reasons. All parties in a legal proceeding are entitled to reasons for a judicial decision. If, in certain situations, patients experience difficulty in comprehending legal concepts, an effort should be made to interpret them. This is precisely what should also be done for someone whose first language is not English.

I hope I've gone fast enough for everyone; this is getting my adrenaline going.

As I indicated at the beginning of this presentation, I come to this work with both my head and my heart. Both hope and fear reside within me. One experience of my second hospitalization remains with me so many years later. I was in hospital during the summer. From my window, I could see the freshly cut grass and flowers below. I longed to smell them through the thick glass windowpane. When I was discharged, I ran to the flowers to luxuriate in their summer scent. Other passersby ignored them, hurrying on their way to work. They did not have time to enjoy such a simple pleasure. I, on the other hand, no longer took these plants for granted.

In closing, I ask that you not forget us as you sit around the table, writing and rewriting the statutes. Do not forget that those of us left lingering behind institutional walls, despite our labels, despite our disabilities, long to be active, contributing members of society. And we want to smell the flowers too. Thank you.

Mr Ron Johnson: I wasn't able to hear all of it. I am going to read through it, though. I had to step out for a meeting. I do want to thank you for your presentation. I understand some of the hardships you've personally had to go through and I can say that those are some of the things we're really trying to address through the new plan for advocates that we're going to come up with. We certainly hope that you will continue to play a part of the consultation process as we go through this.

Ms Finkler: When you say that you've endured the hardships, that you understand, does that mean that you have also been in a psychiatric facility as an inpatient?

Mr Ron Johnson: I would suggest to you that—you're right. I could try and understand; I never will. Nobody here will. But I can certainly try and that's really what we are attempting to do. We've had a number of people who have come forward who have been through similar circumstances, and you're absolutely right: I will never truly understand what you went through. I can only do my best to try to understand how you're feeling.

Ms Finkler: Thank you.

Mr Parker: Thank you for your very helpful comments. You're very poetic in your comments today. You invited us to ask for some further elaboration on your point number 2 on page 7. I'm happy for you to do that.

Ms Finkler: That's with regard to the aversives?

Mr Parker: "Least intrusive" and "least restrictive."

Ms Finkler: Right. I worked for about five, almost six years for an agency providing service to people with developmental disabilities. There was a man who was blind and developmentally disabled who self-injured; in other words, he would bite and would perhaps scratch the first layer of his skin. As a result of this self-injurious behaviour, I was instructed to tie him up, scream at him. I had to trip him first, then take Velcro belts, put them on his hands, tie his legs together and then put a helmet on his head and gag him. This was with the knowledge of Comsoc directly at the time and was indicated as the least restrictive alternative to institutionalization.

Now, with respect to what was done at the time, this was approximately eight years ago, I disputed that and in fact attempted to get an injunction to stop, since they had no consent for what they were doing. Since they realized that they had no consent for what they were doing, they stopped, but it took two and a half years.

Mr Michael Brown: Your presentation is powerful, to say the least. We have, over time, heard some other powerful presentations from people in your situation, and you're right, none of us will ever understand exactly. But what I really wanted to do here was to suggest to you that we're hopeful that the government does create a new advocacy system and the government tells us they will.

I myself am quite sceptical of their plans in that, to date, we have heard nothing about any time line on this. We've seen other actions by the government where they have repealed something and the action to replace it just does not seem to be happening. It is very troublesome to many of us who really are trying to understand these issues not to have some commitment to go forward. I would ask the government to, at some point, tell us what the time line is on this. Our view is that the time line should have been that they had developed their new model, put it in place and repealed the act. They seem to have got the order wrong here.

I wonder if, given the fact that we're seeing press reports about legal clinics and what might happen to those, how this would really put further at risk the very people that you are here telling us about.

1710

Ms Finkler: Well, you want to know something? I get really upset a lot. This is not official, okay? I suppose it is; I'm speaking to a bunch of government representatives. But what happens to me at the end of every day is that I go home and I try to rewind or dewind and I sit there and there have been a number of times where I've just had to cry, because what else can you do when you sense your own level of powerlessness? Right?

There's one situation where a number of women are being sexually assaulted in a boarding home and they're terrified to leave because the landlord gets the check, the precise thing that will happen once you remove the statutory provisions that allow a landlord to become a guardian. I'm sitting there and I'm going, "Just leave," but what these people need are human bonds, human connections that I, as one individual, cannot provide for them.

Individuals that I might have asked to be voluntary advocates in the past are upset because they're getting laid off from their jobs, so they're feeling the need to go

look for work rather than provide a voluntary service that they might have been willing to provide in the past. So I end up making five, six, seven calls trying to reach out and I just end up getting depressed and sad, and I say, "Okay, this is what I can do in the world and I can't do anything else."

But it's a very kind of emotionally overwhelming thing to realize because I come as someone who has struggled for 20 years. With respect to the various party differences, I was fighting you guys when you were the Conservatives, I was fighting when the Liberals were in power, I was fighting when the NDP was in power, so I'm kind of a cynical person. I figure I'll come to talk to the Conservatives, I'll talk to the Liberals, I'll talk to the NDP and I'll probably talk when there's a new party in power. I suppose from that perspective, what I would ask of all of you is to just think about the people that you're dealing with irrespective of party affiliations, because ultimately it could be you.

That's the other thing. There are people who I was very surprised to see, who previously had a great deal of stature in society, who are now in long-term-care facilities and they're all alone and horrendous abuses are being perpetrated. There's one media figure who used to be quite prominent and is now on a gastric tube because they don't have staff to feed her by hand. I don't know, I could go on, so maybe someone else should talk.

Mr Ron Johnson: On a point of information—

The Chair: I'm sorry. I don't know what a point of information is.

Mr Ron Johnson: On a point of order then. How's that?

The Chair: If you want to do a point of order, you're entitled.

Mr Ron Johnson: I know that there was some concern about the time line. I was just going to give clarification on that if you were interested.

The Chair: That's a point of clarification. I've already ruled that out of order. I think we're going to go on. Are you done, Mr Brown?

Mr Brown: Yes, and Mr Johnson could give us that time line following this presenter.

Mrs Boyd: Thank you very much for coming for sharing with us. We can hear in your voice the kind of frustration and despair you're feeling about the ability of the community, even with the resources they have at this point, to try and deal with some of these difficulties. Knowing that we're faced with the very real possibility that even those resources that still remain in the communities are being eroded every day in terms of funding cuts must make that despair that much worse, and I really appreciate what you're saying.

One of the real issues here is that, as a larger and larger proportion of our population becomes vulnerable, with natural aging and with the fact that we can now save and give a longer life to a lot of people who would not have lived in the past because technologically we can do that, this all becomes more and more urgent at the same time because we're getting larger and larger numbers of people looking to organizations like yours for assistance. The deinstitutionalization, particularly in psychiatric and developmentally delayed facilities is adding to that

burden. Yet your funding—I know legal clinic funding has stayed the same for the last four years. There's now a threat to that funding, and it really adds to the sense of helplessness that people have, because even those community agencies with the best will in the world are finding it very difficult to meet the growing needs as they go along.

Ms Finkler: Yes. It's funny because I was talking with other service providers and we're saying how we don't want to talk to our friends any more when they have problems. We were laughing; I thought it was only me, and what we realized is we don't have time to listen to our friends' problems because we're so busy listening to our clients that it's on psychic overload. We can't listen any more. Then, of course, I wonder about my friends as my source of support, because they do the same kind of work that I do. So I'm actually really grateful I've got a few friends who are willing to listen to me again today. It's just a kind of relationship phenomenon where you just get overloaded.

Mrs Boyd: Even the faith communities are trying to say to the government, "We can't fill the holes that you're creating by the kinds of cuts that you're making," so all of these supports that are so hopefully talked about by people are disappearing one by one.

I wanted to talk to a little bit about the aversive stuff because I think one of the things that is hard for people to understand is why, first of all, the prohibition against it was in the original act and why we have such concerns about it. This is a particular form of aversive therapy, as we all know, because we've had lots of people—in fact we've had lots of people who are not Canadians—come and talk to us about how important it is to allow this kind of treatment.

But it's important for us to hear from people like you about the kinds of routine aversive behaviours other than shock that are used and have been used in the past and have now passed out of fashion. Those of us who listened to some of the cases that come in front of the College of Physicians and Surgeons where we hear physicians defending sexually abusive behaviour as, "Well, that was the treatment that was done before," and the kind of drug therapies, the insulin therapy that we heard about the other day, but some of the excessive use of electroshock therapy within psychiatric facilities—these people have a real experience with the fact that physicians will come and tell government that their treatments are effective and the only one there, when in fact five, six, seven years down the line, we find out what a mistake we've made and that person's life is destroyed. You see lots of those cases in your work, I expect.

Ms Finkler: Every day. But what I realized is that implementing those aversives—the reason I did it is because I wanted a job. Then you have to think, if you do something that you're morally and ethically opposed to just for your paycheque, what kind of person are you? So I ended up leaving rather than implement the aversives. I figured, well, okay, a job is for today but your life is forever and you have to look in the mirror every day, not just when you're working.

I guess the underlying issue, if one is to look at a common thread in all of these things, is that there are

people in positions of power in this society, and doctors are given that power by virtue of their status, by virtue of legislation, and people with disabilities have often been the subject of those abuses. That doesn't mean that there aren't really wonderful doctors; there are, and in some cases I would attribute part of my healing to the positive effect that those doctors have had.

But we also have to recognize that there are doctors like Dr Wiens, for example, who went to the Ongwanada institution in Kingston and did numerous rectal examinations on people with developmental disabilities and there was no medical reason, merely the exploitation of these bodies for the educational purposes of the medical students. Why would that happen, other than the power inherent in the position of doctors in this society?

Mrs Boyd: When we look at the history of Huronia or any of the other facilities for the developmentally delayed, we see many instances of that. Alberta is not the only province where forced sterilizations occurred.

Ms Finkler: Exactly.

Mrs Boyd: They occurred here. They may not have occurred under law, but they certainly occurred with the knowledge and the sanction of the government of the day. Those are the kinds of things that have been a part of our history that the work that has happened over the last 15 years has worked to change.

One of the most tragic things about these hearings has been that virtually everybody who comes before us talks about these kinds of situations and talks about inquests as being the largest source of information about the abuse of people at the hands of the medical community. I think that is something that we need to keep in mind. It's too late for that individual when there's an inquest. It doesn't help them. And if we, as the Legislature, don't listen to the recommendations of those inquests, then we also are implicated in the kind of abuse that occurs. Do you agree?

Ms Finkler: Yes. So are you going to make the changes I'm asking for?

1720

The Chair: Sure.

Ms Finkler: Well, if I spent the time—I was up till 2 in the morning writing this—I would hope that there would be some way for me to know if these recommendations are going to be implemented.

Mrs Caplan: Who has carriage of the bill who could answer that question for her?

Mr Parker: I'll answer the question. Your comments, along with all the other comments that we have received over the past three weeks, will be considered by all of the members of this committee. Next week is the time when we go clause-by-clause and decide just where we make amendments.

Ms Finkler: Okay. Thank you.

The Chair: Ms Finkler, I thank you very much. My only comment is that if you can change the world for one person, that is a great achievement. It sounds like you've done your share.

Mr Ron Johnson: In response to Mr Brown's concern about the time line, just for some information, I want to let the committee know that the minister also has something before cabinet in terms of an advocacy plan within

the next couple of months, after we've listened, of course, to the people through this hearing process and some of the others.

Mr Marchese: Would you be bringing that back to committee for us to discuss and to give people an opportunity to respond to those recommendations?

Mr Ron Johnson: What we're saying is that there's been a great deal of public consultation. This is part of the public consultation process that will happen before cabinet—

Mr Marchese: I appreciate that. Fine. The minister will come up with a proposal. We would love an opportunity to discuss that, but I'm sure the folks that have come in front of this committee would love to be able to respond to that, unless of course you've taken care of every one of their concerns. Then we don't need to do that. But I'm certain that may not be the case.

Mr Ron Johnson: We've said very clearly that it's going to be a non-legislated plan. We've said that from the beginning. In fact, even if you look at Mr Reville's recommendation, it wouldn't require legislation to implement. So I would suggest to you that the hearings that we're going through now and the stakeholder consultations that we went through before have given us a great deal of public input into what we hope will be a better and more effective advocacy plan for the province of Ontario.

Mr Marchese: We're looking forward to that plan.

The Chair: Thank you, gentlemen. No doubt we'll discuss that further in our clause-by-clause deliberations.

The next order of business is a motion on the floor by Mr Parker. Perhaps you would like to restate that motion.

Mr Parker: My motion was that when this committee reconvenes, it reconvene at 10 o'clock on Monday in room 151.

Mr Ramsay: Could I propose a friendly amendment to that motion, that, continuing with that, the time line is fine, outside of the jurisdiction of the Ontario Legislature?

Mr Parker: I think that matter has been dealt with.

Mr Marchese: The other motion dealt only with committees not being able to start unless there was one member of each opposition party here. The motion to meet in another location is a different matter.

The Chair: Perhaps Mr Ramsay could restate it for us. Mr Ramsay is moving as follows.

Mr Marchese: Except, Mr Chair, he's moved a motion, and we're dealing with that. Are you asking him to move another motion?

The Chair: No, I'm not asking Mr Ramsay to do anything.

Mr Ramsay: I proposed an amendment to the motion.

Mr Marchese: I see. Fine.

Mr Ramsay: I'm amending the motion that we just continue on. I believe the motion is that we adjourn till 10 o'clock on Monday morning, and I've just added to that, as hopefully a friendly amendment, to someplace outside the jurisdiction of the Ontario Legislature.

Mr Parker: I hardly see that as a friendly amendment. That runs right in the face of one of the elements of my motion.

Interjection.

The Chair: Excuse me. Mr Parker moved that we meet here at 10 o'clock in room 151. There is a motion to amend by Mr Ramsay, deleting room 151 and naming a place other than Queen's Park. Now the question is, Mr Parker, are you willing to accept that amendment?

Mr Parker: No, I am not.

The Chair: Okay. If we're not, is this a formal amendment that we shall vote on? Fine. We have a formal amendment by Mr Ramsay amending Mr Parker's motion to meet at 10 on Monday for clause-by-clause at a location other than Queen's Park. That's the motion, and we can now have debate. Mrs Caplan had her hand up first.

Mrs Caplan: I think the amendment is friendly. We certainly would like to see the committee hearings go forward. While there was some discussion earlier about this being premature, this is a plan which would be a contingency plan and available for the Chair to make that call so the committee could move forward and do its work with committee members having some comfort that they were not in any way creating any tensions and also that their public would have right of access to the hearings.

I'm not going to belabour the point. I hope the government will support it. Nothing we're proposing in any way should upset or concern the members. In fact, there is a number of locations very close to here, whether in a hotel room or at the University of Toronto, where rooms could be made available without any difficulty. This is not a precedent whatsoever for a committee; it's a very normal thing for committees to hold their meetings in locations other than the legislative precinct.

This anticipates a possible problem, it solves it in advance and it just shows the kind of spirit of working together, cooperation, that would allow the hearings to move forward in an orderly manner and without any disruption of any sort.

Mr Ron Johnson: I want to speak to the amendment and categorically say that I will not be supporting it. This is a public institution; it will be open Monday morning. Committee hearings have been scheduled for Monday morning in this building, and we have a responsibility to be here regardless of any strike.

I might add too—and I'm going to repeat; obviously, my colleague across the way didn't consider what I had to say the first time—that this is a premature motion. There is no strike as of right now effective Monday morning. We don't know that there will be. Quite frankly, I think this is a premature panic on your part.

What we're dealing with is a situation where, yes, maybe there will be a strike, but we don't know. But even if there is, you have a responsibility, as does every member of this Legislature, to show up here Monday morning ready for work. It's a public building. It's a building that you, as a member, have right of access to; it's a building that the public has right of access to. It's more of a security issue than anything else. If you have some recommendations to security about how you want them to deal with the right of access, that would be a more appropriate way of dealing with this problem. But whether there's a strike or not, I think the hearings must be in this building, where they were scheduled to be

initially. It is a public building, and it is going to be open Monday morning.

The Chair: Mrs Boyd, I should point out that I'm taking speakers in the order they raise their hands, without regard to what caucus they're from.

Mrs Boyd: I raised mine simultaneously with Mrs Caplan, but it matters not.

The Chair: I'm sorry. If it matters not, Mr Leadston.

Mr Leadston: I'll concede my time in the spirit of cooperation and allow Mrs Boyd to go before me.

The Chair: Thank you. Mrs Boyd, I'm sorry I missed you the first time.

Mrs Boyd: Thank you. Mr Johnson's words are probably an indication of why we're looking at having to take some contingency plans in the first place—very confrontational instead of cooperative. Basically, that is the attitude that has brought us to this point.

I really would respectfully repeat what I said before, that whatever the circumstances are, whatever efforts might be made in terms of security in terms of members of the Legislature, we have all been through situations where the only security the security could provide was shutting all the doors. We have seen in the past that members' privileges were violated by their not being able to attend.

We have also seen, in the same light, many occasions in the past few months when it would not have been possible for those who require public transportation to get to this building because of the problems of the honouring of picket lines by those who have to drive them. Wheel-Trans is unionized. That will happen. We know that. The population that is most concerned with this bill will therefore, we all know right now, not be able to have access in the way they require it.

I think it is very naïve for Mr Johnson to say it is foolish to make advance plans. Everybody makes advance plans for the safety of those who are involved in their operation when there is a prospect of this. It would be very foolish for us not to. I think Mr Ramsay's amendment is indeed friendly to everyone concerned with the business of this committee.

Mr Leadston: I believe that as members of this Legislative Assembly, each of us here has a duty and responsibility to be here. I am not and will not be intimidated by external forces. I have a responsibility to be at committee, whether it's the justice committee or ABCs or whatever other committee. I don't feel intimidated, and I'm not going to be intimidated, by external forces and elements that I have absolutely no control over.

Mr Marchese: The ideological zealotry is quite apparent as we listen to the members of the government. What we've said on this side is that we want to do clause-by-clause; we want to work at that and we're ready to come Monday morning. What a number of us has said is that in the event of a strike, we make tentative arrangements to go elsewhere. We don't know whether there will be one. We understand that. In the event there is, we're saying we all want to show up for work, and all you have to do is to be reasonable enough to accommodate our work in a different location so we can do that. It's not unreasonable. The zealotry is not necessary. The request that has been made by both opposition parties is

something that I would have thought you would have considered, but quite clearly, it doesn't seem to be affecting the members.

Mr Chair, we're quite ready for the vote, I think.

The Chair: Is there no further comment?

Mr Marchese: I call the question, Mr Chair.

The Chair: First of all, is there any objection to the calling of the question at this time? If not, we are dealing with an amendment to the motion made by Mr Ramsay to meet on Monday at 10 o'clock at a place other than Queen's Park. All those in favour of the amendment?

Mrs Boyd: A recorded vote, please.

Ayes

Boyd, Caplan, Marchese, Ramsay.

Nays

Doyle, Fox, Johnson (Brantford), Kells, Leadston, Parker.

The Chair: The motion is defeated. We now have Mr Parker's motion on the floor, unamended. Is there any debate in regard to Mr Parker's motion? All those in favour of Mr Parker's motion?

Mr Marchese: We're all in favour, Mr Chair.

The Chair: Carried.

Mrs Caplan: I have a motion, Mr Chairman. I move that in the event of a strike, the committee request the Chair to seek advice from Mr Speaker about the possibility of having this committee reconvene in a location outside the precinct.

Mr Marchese: Call the question.

The Chair: First of all, I'd have to ask if there—

Mr Marchese: It's a different motion.

The Chair: Yes, it's an acceptable motion; I'm not ruling against the motion. The motion is that in the event

a strike is called starting Monday or earlier, I would of necessity have to consult with the Speaker of the House to obtain his advice as to having the meeting at a location other than Queen's Park.

Mrs Caplan: That's it.

The Chair: Is there any discussion of the motion?

Mr Ron Johnson: Can I call a 5-minute caucus? Am I allowed to do that?

The Chair: That might save us a lot of time. There's no objection? You've got it.

The committee recessed from 1735 to 1740.

The Chair: The five minutes is up. We have a motion on the floor, and Mr Johnson is recognized.

Mr Ron Johnson: I'll be very brief. Our position is that the Speaker is ultimately charged with security of the facility anyway. If there is a security problem with respect to access for any of us, he will make that decision on his own. He doesn't need to be prompted by the Chair of this committee. We're ready to call the vote.

Interjection.

The Chair: The question has been called by Mr Marchese. Is there anyone who objects to the question being called? No? We are therefore voting on the motion. All those in favour?

Mrs Boyd: Recorded vote.

Ayes

Boyd, Caplan, Marchese, Ramsay.

Nays

Doyle, Fox, Johnson (Brantford), Kells, Leadston, Parker.

The Chair: The motion is defeated. Is there any more business before this committee before we adjourn till Monday at 10 in room 151? We stand adjourned.

The committee adjourned at 1741.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Chair / Président: Martiniuk, Gerry (Cambridge PC)

Vice-Chair / Vice-Président: Johnson, Ron (Brantford PC)

*Boyd, Marion (London Centre / -Centre ND)

Chiarelli, Robert (Ottawa West / -Ouest L)

Conway, Sean G. (Renfrew North / -Nord L)

*Doyle, Ed (Wentworth East / -Est PC)

*Guzzo, Garry J. (Ottawa-Rideau PC)

Hampton, Howard (Rainy River ND)

Hudak, Tim (Niagara South / -Sud PC)

*Johnson, Ron (Brantford PC)

Klees, Frank (York-Mackenzie PC)

*Leadston, Gary L. (Kitchener-Wilmot PC)

*Martiniuk, Gerry (Cambridge PC)

*Parker, John L. (York East / -Est PC)

*Ramsay, David (Timiskaming L)

Tilson, David (Dufferin-Peel PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Brown, Michael A. (Algoma-Manitoulin L) for Mr Chiarelli

Caplan, Elinor (Oriole L) for Mr Conway

Fox, Gary (Prince Edward-Lennox-South Hastings / Prince Edward-Lennox-Hastings-Sud PC) for Mr Klees

Johns, Helen (Huron PC) for Mr Hudak

Kells, Morley (Etobicoke-Lakeshore PC) for Mr Tilson

Marchese, Rosario (Fort York ND) for Mr Hampton

Clerk / Greffière: Bryce, Donna

Staff / Personnel: Swift, Susan, research officer, Legislative Research Service

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**Legislative Assembly
of Ontario**

First Session, 36th Parliament

**Assemblée législative
de l'Ontario**

Première session, 36^e législature

**Official Report
of Debates
(Hansard)**

Monday 26 February 1996

**Journal
des débats
(Hansard)**

Lundi 26 février 1996

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Advocacy, Consent
and Substitute Decisions
Statute Law Amendment Act, 1995

Loi de 1995 modifiant des lois
en ce qui concerne l'intervention,
le consentement et la prise
de décisions au nom d'autrui

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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 26 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 26 février 1996

The committee met at 1005 in room 151.

ADVOCACY, CONSENT
AND SUBSTITUTE DECISIONS
STATUTE LAW AMENDMENT ACT, 1995
LOI DE 1995 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'INTERVENTION,
LE CONSENTEMENT ET LA PRISE
DE DÉCISIONS AU NOM D'AUTRUI

Consideration of Bill 19, An Act to repeal the Advocacy Act, 1992, revise the Consent to Treatment Act, 1992, amend the Substitute Decisions Act, 1992 and amend other Acts in respect of related matters / Projet de loi 19, Loi abrogeant la Loi de 1992 sur l'intervention, révisant la Loi de 1992 sur le consentement au traitement, modifiant la Loi de 1992 sur la prise de décisions au nom d'autrui et modifiant d'autres lois en ce qui concerne des questions connexes.

The Chair (Mr Gerry Martiniuk): Good morning, members of the committee. This is the continuation of the justice committee's consideration of Bill 19. This week has been allocated for clause-by-clause consideration of that bill. David Tilson, parliamentary assistant to the Attorney General, has carriage of Bill 19 on behalf of the Attorney General and the Minister of Culture, and Helen Johns, PA to the Minister of Health, has carriage of the health portion, I understand.

The first matter for consideration is section 1 of Bill 19. I would ask the committee if there are any questions, comments or amendments in regard to section 1.

Mr Rosario Marchese (Fort York): I move that section 1 of the bill be amended by adding the following subsections:

"(2) Subsection (1) does not apply unless the government of Ontario has established a system of advocacy for senior citizens and persons with disabilities that includes the funding by the government of a non-profit charitable corporation that,

"(a) takes a cross-disability approach;

"(b) coordinates community development, education and training; and

"(c) has authority to undertake systemic advocacy.

"(3) The following material shall not be destroyed and may be used by the government of Ontario in the development and implementation of a new system of advocacy for senior citizens and persons with disabilities:

"1. Statistical information collected by the Advocacy Commission.

"2. The results of the community consultations undertaken by the Advocacy Commission.

"3. Training and education programs prepared by the Advocacy Commission.

"4. The resource database prepared by the Advocacy Commission.

"5. Lists prepared by the Advocacy Commission of advocacy groups that the commission worked with."

I'd like to speak to the motion, Mr Chair.

The Chair: Please do.

Mr David Tilson (Dufferin-Peel): Mr Chairman, on a point of order: Section 1, which this amendment is proposing to amend, states, "The Advocacy Act, 1992 is repealed." I don't believe this motion to amend is in order. I think when you're outright repealing legislation you simply can't come along and dicker with that particular section. If Mr Marchese felt strongly about these types of issues, he'd have to put forward a separate bill.

The Chair: Mr Marchese, did you wish to speak to the point of order?

Mr Marchese: While the section says that they're repealing that act, this suggests an amendment to it that says that you keep much of what was in the Advocacy Act, but not in its entirety obviously. So it amends it, and I think it's quite in order to comment on parts of it because I think the government might want to consider this part of it. While they may say, "No, we don't in general agree," the government may decide because this is a reformed opinion of that and it amends a part of that, they may want to consider that. I think it's quite in order.

The Chair: Mrs Caplan, I'll deal with you in a moment, but I am ruling that the point of order is in fact invalid and that the amendment is in order.

Mrs Elinor Caplan (Orlino): Couldn't I speak first before you make a ruling?

The Chair: Yes.

Mrs Caplan: I think I'm entitled to speak first before you make your ruling.

The Chair: I'm not trying to in any way curtail your right, but I thought that might shorten it. If it does not, please address the Chair.

Mrs Caplan: Thank you very much, Mr Chairman. In fact I was going to suggest to you, respectfully, that I believe that the amendment is out of order on two counts: one, because it amends a section that I don't think is amendable but, two, because it also commits the government to funds, and an opposition amendment cannot do that without the government's consent. It does speak to funding.

However, I think it is unfortunate that it's not possible to amend the section, and I also believe it's unfortunate that the government hasn't come forward with a plan or a proposal prior to the striking out of the legislation

which happens under section 1. It repeals the Advocacy Act.

I think everyone's expectation, given the government's commitment to make changes—because I think that's what everyone understood when the government said they were going to repeal the commission but they had plans for protecting vulnerable persons in the province—and given the fact that we have a history in this province of an identifiable need for that protection, it is regrettable that the government has chosen to hold a consultation on the future of advocacy after and during the repeal of this legislation. A much more normal and expected course of events would be to have the consultation, decide what it is that you're going to do, and do the two things at once: change or repeal or amend the existing legislation and bring in your proposal.

I know the government has said that they don't intend legislation, but I still believe that before you repeal legislation your own plan and proposal should be in place. So my advice to you—and I understand that you're going to rule that this amendment is out of order and I agree with that ruling, but I do think the government—

Interjection.

Mrs Caplan: He said he's going to rule it out of order.

Mrs Marion Boyd (London Centre): No, he did not.

Mrs Caplan: In order?

The Chair: The motion in order, yes.

Mrs Caplan: Then I didn't hear you correctly. I still think the motion's out of order, but I'm pleased that you're ruling it in order as that will give us an opportunity to debate it.

Mr Tilson: Surely before you make a decision you'll give members of the committee an opportunity to debate this point of order. It's a legitimate point of order and it's a very serious point of order. I can tell you that certainly on the opposition side we've all been before committees where this type of amendment is not allowed; it's simply not allowed. When you repeal something outright you can't amend that in any form or other. Ms Caplan is quite right. There is precedent in this very committee, and I suggest, Mr Chair, respectfully, that you consider that, that there are precedents in this committee and every other committee that I've sat on that when you outright repeal something you can't amend that section.

The Chair: Is there any more comment in regard to the point of order we're dealing with right now?

Mrs Boyd: I'd be very interested in hearing Mr Tilson's precedent, because I certainly can't recall a precedent. First of all, this is a government that's very fond of repealing things and maybe there's something that's happened that we're not aware of. But the issue here is if you are going to repeal, this in no way says you can't repeal the Advocacy Act. This motion simply says if you go ahead with an act to repeal, you can only do that if certain other things have happened first. It does not in any way obviate the government's right to repeal, it simply limits the way in which that can happen, so I believe that Mr Tilson's motion is out of order.

Mr Marchese: Several quick things. Just to remind Mr Tilson that he used to sit right here when he was in opposition—

Mr Tilson: I used to try your type of amendments all the time and I was turned down.

Mr Marchese: He was here often, and we on the other side were often accommodating to the opposition. It's interesting how things change when you get into government.

I think the public has an opportunity or needs to have an opportunity to hear the arguments. If Mr Tilson says, "This is repealed," and would, though that motion, kill all the kind of debate that we need to have here so that the public has an appreciation of what we're talking about, it would be shameful.

But this is a proper amendment. It amends it in a way that the government can say: "This is something we can do. In spite of the fact that we want to repeal this generally, this is the least that we can accept out of that proposal." Your motion to say that this is in order is all right with me.

With respect to Mrs Caplan, I was going to say earlier on that she would have had an opportunity to make those arguments she was making with respect to her motion, so I hope she'll comment on them as we do that.

Mrs Boyd: The only experience I've had on a repeal of an act has been the repeal of Bill 8. I would remind the committee that the government itself made an amendment to that bill. It was in order at that time. It was a bill to repeal the Employment Equity Act. So I think there are precedents that certainly say, even if you have that sort of motion in front of you to repeal an act, there are conditions under which it can be done.

The Chair: Is there any further discussion in regard to Mr Tilson's point of order?

Mr Tilson: I just have a comment on Mr Marchese's kind remarks about how I used to sit in his chair.

Mr Marchese: Right here.

Mr Tilson: Absolutely. I will tell you that as far as my suggesting that debate be stifled, that's the whole purpose of when we vote for or against this section. You can debate on the whole issue of the philosophy of the Advocacy Act. It's not my intention at all. I'm simply saying that you're out of order.

The Chair: Is there any further discussion? I reaffirm my ruling that the amendment is in order, that there are no formal restrictions on the amendments which may be moved on a repeal bill and the amendment is not destructive of the principle of the bill. Thank you, Mr Tilson, for your learned submissions. The motion made by Mr Marchese is in order, and therefore I'd ask him to proceed.

Mr Garry J. Guzzo (Ottawa-Rideau): I challenge the Chair.

The Chair: You would have to move a motion, as I understand it, to appeal to the Speaker of the House. You have to move a motion.

Mr Guzzo: I'm not prepared to move a motion.

The Chair: Thank you, Mr Guzzo. Mr Marchese.

Mr Marchese: What we heard in countless submissions that people made was that we needed an Advocacy Act and we needed an Advocacy Commission and we needed rights advisers. We heard that from most of the deputants that came in front of this committee. They said it was a shame that they would have to come here in

front of this government to have to make the case again, since they'd been making it for many, many years.

Finally, our government had listened to their concerns about vulnerable people, the experiences they've had as seniors, the experiences they've had as people with disabilities, people with mental problems that they have experienced in the past. They were happy to have a focus point. Their focus point was the Advocacy Act and the Advocacy Commission that gave vulnerable people a voice finally.

We heard many, many people saying, "Although we didn't have to use the services of the Advocacy Commission, we were very happy to know that something was there that spoke to us, that gave us a voice." I agree with them. We've heard many, many stories from people about their vulnerabilities and how it is important for government to be able to say, "We're there to give you a voice and to protect you," because otherwise it makes their situation much, much worse in society.

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What our recommendation does is recognize the fact that this government has a strong desire to repeal advocacy altogether. They understand the government doesn't want advocacy. They understand that you have an opinion that says institutional advocacy is wrong, that somebody else should be doing it. They said that even though we know you have that view and even though we disagree with you, the least you could do is accept an argument that says we need to have something in place, a non-profit, charitable corporation, that takes a cross-disability approach, that coordinates community development, education and training and has authority to undertake systemic advocacy.

These three things are very, very important, because you can't leave the work of advocacy compartmentalized in the different communities, working almost on their own, without bringing all of these concerns that all these communities and the various disability communities have together. They need to be coordinated. They can't be left on their own outside, fighting for their concerns, without the protection, without the coordination of the services, so that we have one voice speaking for all of us as opposed to having 100 voices speaking separately in that regard. We agree with that.

We agree that we need community development that is coordinated, we agree that we need education that is coordinated and we agree that we need training that is coordinated. We recognize that a lot of organizations out there are doing these things on their own and separately, but we don't think that's enough. They've told us that their work in this field is not enough, that it's insufficient, that they need greater support from government and they need legitimacy, by the government saying, "We recognize that it's important." That's why the act was important.

But to leave training and education to those communities that have already been underfunded by this government is wrong. They have said that the people doing the training in the field, as much as they're doing it, are insufficient with the money this government gives them; they can't do it alone. They also said that to leave the work of advocacy and rights advice to volunteers is

wrong. First of all, many of their organizations don't have the resources. Secondly, the volunteers come and go, because they burn out in the field.

You can't leave the very serious nature of advocacy and rights advice to people who don't have the skills. You can't get the training long enough to be able to have that kind of power. Besides that, as many have told us, there is no right of entry. Countless people have said, "We knew of many abuses that were going on in a number of institutions, but we had no power to be able to deal with them." Volunteers couldn't deal with them and those organizations couldn't deal with them, because they had no power to be able to get in.

So when you say, "Let the volunteers do it; let the organizations do it," they're telling you: "We can't. If we don't have the power to be able to enter a premise to be able to solve a particular abuse, then we have left that vulnerable person on their own." We can't do that. I don't think a government can simply say, "We don't have a responsibility to take care of those problems." Indeed, they must, because if they don't, they're leaving a whole number of people, seniors and people with disabilities and those with mental problems, on their own. I think that's wrong.

We need a commission that has the authority to undertake systemic advocacy. Why is that important? It's important because what we know is that you can't solve problems piecemeal. You can't say, "We've encountered a particular problem with this particular institution and we've solved it after many, many years of fighting it through legal involvement" without understanding that simply solving one particular case is insufficient. You need to be able to solve systemic problems, and they're everywhere. That's what the Advocacy Commission was going to do, and you're now killing that.

This particular measure that we're proposing keeps only a small amount of the work that commission would be doing, and all the vulnerable people have been saying, "This is the least that you can give us."

You say that the Advocacy Commission was an incredible bureaucracy. We happen not to agree with that. I don't agree with it. But if you felt, as a government, that that commission cost too much money, then why not just cut that back, which you did anyway? You cut it back by \$7 million or \$8 million already, and it would be further cut back, I have no doubt, but why not keep part of its functions if you felt it was too much? Keep the basic functions of that Advocacy Commission. That's the least you could have done.

Then you would have been saying to the communities out there: "We heard you. We heard you in the last three or four years, because you've been telling us. We heard you over the last 15 years. We heard Father O'Sullivan, who said that this was important. So although we can't sustain this because it's a big activity and it's too costly, we will keep parts of those elements of the Advocacy Commission that we think are good. So we're going to leave you \$3 million or \$4 million to be able to do that work."

But you didn't do that. You went in your mean-spirited way and said, "No, advocacy is wrong." You said, "Government shouldn't be doing it," and I disagree with you

strongly, profoundly. I can't even find a better word to tell you how profoundly I disagree with all of you when you say government should not be advocating, should not be in the business of advocacy. It's fundamentally wrong. Governments should be in the business of advocating on behalf of vulnerable people, because if you don't do it, who else is doing it out there?

Then you'll say, "Oh, but the families are doing it." We heard families coming in front of us saying: "Even we, when we tried to intervene in cases where we saw abuse, had no power. Not only that, we were afraid for the vulnerable person in that institution because in speaking out they were afraid of repercussions." So even the family members who you say are there to advocate and to protect didn't have the power or the wherewithal to know how to protect them even when they knew they should, because they were powerless when they saw that in speaking out, once they went home, they realized that their family member was alone and the abuses would continue, or might continue, because you in fact spoke out against those abuses. So even in those situations, the family members said, "We're powerless."

Even if we admit that every vulnerable person has a family, even there we have a problem, as we said. Countless people told us many of the vulnerable people have no family. So who takes care of them? We don't know. We don't know what your answer is to that. Who takes care of the people who don't have a family member? What is the government's role there?

Well, you say, "We care about advocacy." All of your members have said that. "We care and we're going to support the institutions out there. We're going to support volunteers through training and education." That's all we heard. I'm not sure what that means. When they tell you, "We need the power of entry, we need some authority, we need legislation that gives us authority to do things," when they tell you that and you don't listen, we've got a problem. When they say, "There are no family members to take care of some people and there's no system in place to help them out," we've got a problem. If you don't listen to the vulnerable people and to the consumers who have suffered through this, we've got a problem. You as a government have a serious problem, and you, I argue, are abrogating your responsibility to take care of those people who have no one to take care of them.

The person who came from the United Steelworkers of America said we need advocacy now more than ever. She says:

"In Ontario today, there are more vulnerable people than ever before. Most estimates range as high as half a million. Well, we think our society should be judged by how we treat these vulnerable members of our community."

I agree with that statement. Many people said that: We judge our society by how we treat the vulnerable members of our community.

1030

"It is no secret that in our view the record of the current Conservative government is nothing short of shocking. Cutbacks to welfare payments have reduced the real income of thousands of vulnerable people who rely on general welfare or family benefits. User fees under the

Ontario drug benefit plan have added a new cost for seniors and people with disabilities. The threat of a revised definition for disability leaves many anxious about their eligibility for pensions and access to dental, drug and extended health care plans.

"The repeal of the Employment Equity Act effectively puts an end to job opportunities and accessible workplaces for the disabled. Cutbacks to education have inevitably removed the money for assistance and assistive devices in the classroom. Cutbacks in legal aid threaten the rights and abuse protection relied upon by disadvantaged people. Massive reductions in transfer payments have severely limited access to transportation for the disabled.

"The downloading of services and costs to municipalities have closed community programs designed to reach out to integrate vulnerable people. Bed closures in psychiatric hospitals and institutions for the developmentally challenged have left many literally on the streets in the absence of any community support.

"Cutbacks in emergency housing or shelters leave little room for seniors or people with disabilities who have been abused in an institution or in their own home."

They list a whole catalogue of problems that your government has engaged in that leaves people more vulnerable than ever before. By repealing the Advocacy Act altogether, you're making their situation worse. You are compounding their vulnerabilities, and then you say governments have no responsibility to advocate? We should not institutionalize advocacy? It's absurd.

If you as a government take all their support systems away, then you remove one of the few tools that protects them. You can feel good about that? You can feel good to say: "Oh, but we're going to support volunteers out there to do their job better. We're going to support community organizations that are doing it even though we cut back 5% in their work and we envision for the cuts that we're going to support them to do their job better."

You're taking the Advocacy Act out, the commission and the money support to help them, and you're saying that you're going to help vulnerable people. I don't understand how you do that. I just don't quite understand how you have the stomach to be able to say that what you're doing is going to help those vulnerable people and that you're going to now empower families to do their job better so they can help their vulnerable people even more.

This bill is designed to give families the power that they need and it's going to create more autonomy for those individuals who are vulnerable. How do you have the stomach to explain that to the public?

This bill takes rights away through the act, through the commission and through rights advisers. You're taking rights away for vulnerable people. You're taking away that tool that they had, that they could run to for rights advice, and you're saying you're helping them. I don't understand how you do that.

Eve Gillingham from the Family and Service Provider Advisory Committee said:

"As for relying on volunteers to act as advocates for vulnerable people, it is true that there are many willing

and capable volunteer advocates working alongside paid staff in a variety of facilities and community agencies. However, volunteers come and go. Before they can be effective, they need to be trained. Once they are trained, they burn out. Community agencies are also a source of advocates, some of whom are paid through government funding and through other funding sources. However, as these agencies experience cutbacks in funding, their staff is increasingly overworked and, as you know," the case in community and social services, they are often, "underpaid."

That's the reality out there. I'm glad you're listening to these people who come in front of our committee to talk about why it is that we need advocacy, because if you're genuinely listening, you will accept this modicum, modest proposal that says: "Please keep something for us. We need it." If not, you're abandoning all of those people in the last 15 years who have argued, "We need this." You're also abandoning the basic tenets and principles advanced by Father O'Sullivan, one of your own members many, many years ago, who put together the proposal after listening to countless people, vulnerable people, who said, "We need something." You're abandoning his principles as well. But not just his, because his views were a reflection of all of the views that he had heard over the years.

You're introducing an act without bringing something back in its place, and I think that's wrong. Many of your members said: "Oh, but if we had brought something, we would have been accused of bringing something. It would have been attacked. That would have been wrong." We disagree with that view. We've been listening to people for the last 15 years on this matter. You knew what they wanted.

If you had some clear thinking about what you wanted to replace this act with, you would have been able to produce that and say, "This is wrong, but we've got something in its place." You would have allowed the people who came in front of this committee an opportunity to be able to say, "Yes, we think that's all right," or, "We think it's inadequate." But you didn't even give them that opportunity.

You know something else? You'll probably bring something back, if we're lucky, in March or April, as another member said, but we don't know what will be contained in that proposal. You know something else? You're not going to bring this back into committee, to allow the opposition an opportunity to be able to debate that proposal and to allow the deputations an opportunity to speak to the proposals. We think that's wrong. But that's how this government operates: "We'll repeal it and we'll bring something back later on. We don't know what it is and the communities won't have a chance to speak to it." They will not have a chance to speak to it. We think that's fundamentally bad governing.

The Toronto Mayor's Committee on Aging said the following:

"The Toronto Mayor's Committee on Aging believes that people who are vulnerable to abuse may need help to make their own decisions. They require information on their rights and on the options which are available to

them, and they require people who can give help to them to deal with issues in culturally appropriate ways."

Later the brief said:

"Ladies and gentlemen, the press release accompanying the tabling of this legislation says it will 'give more power to families in care and protection of their mentally incapable relatives.' The Toronto Mayor's Committee on Aging believes that families do not need more power, frail people do. We ask you to reconsider this legislation and allow more opportunity for consultation."

What it says is that frail people need more rights, because it is they who are suffering the problem of a particular disability, and if we don't take care of that individual who otherwise wouldn't have the wherewithal to know how to combat a particular decision that was made against them, if they don't know how to do that, then they effectively have no power and that power has been taken away from them.

The rights adviser would at least be able to be there and provide information as to what they could do; not to tell them what they can and can't do, but to tell them of their rights. That's fundamental; it's in the Charter of Rights and Freedoms. Many people have argued that as the case. It's a fundamental right in the Charter of Rights and Freedoms. We're only extending that right of the charter through these basic rights of the act, of the commission and rights advisers. You're taking that away. Many people have said you will face legal challenges, and I suppose you will deal with that; I understand that. But when you read various sections of the Charter of Rights and Freedoms, they give vulnerable people those protections. The Advocacy Act spoke to that and met that need yet again, in a different form.

Laurie Hall of A-WAY Express said:

"This government is proposing to repeal the act that was to provide a means for these things to happen.

"This government can still provide the opportunity for these things to happen.

"We need access to the tools and education that will allow for community development.

"We need to be able to develop education and training for each other and for society at large to begin to make the changes that are necessary."

The case that is made here is the following: Governments need to stay involved in advocacy. They need authority in law. It should be stated in law why advocacy is important; not to take that law away, not to repeal it altogether, but it should be in law that gives vulnerable people a sense that they're being protected by the government. If you take it away, that protection is gone. It is wrong to say institutionalized advocacy is not our business. We say it's wrong. If you argue it's too costly, make it less costly, but keep the system intact. Don't take it all away.

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This proposal says, to have a cross-disability approach, coordinate through community development, because community development is important. It empowers people. It empowers communities and individuals in those communities. It empowers organizations to know how to be able to do community development in a way that allows for people to have autonomy. It allows for educa-

tion and training. It's modest; it's not a large amount of money we're talking about here. It has the authority to undertake systemic advocacy.

Subsection (3) says, keep all of the information that has already been collected by the Advocacy Commission. Keep the statistical information collected, the results of community consultations undertaken; because there were many. The training and education programs prepared by the Advocacy Commission, keep that as well. Don't throw it away. The work has been done. You would be wasting a whole pile of money if you took that away. The resource database and lists prepared by the Advocacy Commission of advocacy groups—all of that is something that has been done. If you take it away, it's a serious, serious blunder this government would be committing.

A number of deputations have come in front of this committee, all of them people who have had a great deal of experience in the field. I wanted to almost get a whole list of them, but they disappear from—well, here many of them are: Advocacy Commission, ARCH, Toronto Mayor's Committee on Aging, A-WAY Express, Consumer/Survivor Business Council of Ontario, Dixon Hall Neighbourhood Centre, USWA, Family and Service Provider Advisory Committee, Patients' Rights Association from Thunder Bay and countless more.

These people have the experience in the field. If we don't listen to them, then who do we listen to? If we are not informed by them, who have the experience in the field, then who is this government being informed by? If they are only to be informed by some of the medical practitioners who have come in front of this committee saying, "We agree to take advocacy rights advice," and to be informed by a few lawyers who say, "Yes, we disagree with the Advocacy Commission and the Advocacy Act," if those are the only people you will allow to inform you on this bill, you're not listening to those associations that are rooted in the community, that have years and years of experience in understanding how vulnerable people suffer. If you don't listen to them, you're not listening to anybody and your ears then are completely shut.

So I urge this government, through Mr Tilson, who's running it as the parliamentary assistant, and others, to take this modest proposal as the least they could do to listen to all those people who came in front of this committee.

Mrs Caplan: This is one occasion where I'm pleased to say that my arguments were not listened to by the Chair. In fact, I take your advice. I think it's an interesting amendment. I think it is supportable. At the end of my discussion of the amendment, I'm going to ask if it's in order that I amend this amendment by splitting it into two subsections, (2) and (3), for voting purposes, because while I suspect that the first half will not be acceptable to the government, the second half may well be, because it costs them nothing to just commit to not destroying all the information. So I'd like you to think about that. While I'm speaking of it, I'll move that amendment to this amendment at the end of my remarks. The reason I'm saying it at the beginning is so that the government can think about and possibly support that part, which would ensure that all of the work that has been done at

expense to the taxpayers is not lost, as it will be helpful to the government as it moves down its future path.

What I'd like to say in response to this amendment, which I'm pleased is in order, is that I think it's a thoughtful and reasonable amendment. I think it is unfortunate that it's necessary, because it would have been my hope that before the government proceeded to repeal the entire Advocacy Act, it would have had its proposal put before us. It is true that during the previous election campaign our platform said very clearly that we were going to repeal the Advocacy Commission, and on that we agreed with the Conservative platform when they said that they were going to repeal the commission as well. I think they went further and said they were going to repeal the act. But where we were also both in agreement was in our commitment to bring in an alternative.

The reason that we said we were going to repeal the commission as it had been constituted by the previous government, the New Democrats, was that there was a very strong sense that it had poisoned the environment. There had been such a strong backlash to the adversarial, anti-professional approach taken by the previous legislation that frankly it was not sustainable and, further, it was not affordable. The \$18 million that had been set aside for the purpose of the Advocacy Commission and its work in any time of restraint was seen as very rich and excessive, and for that reason as well we felt it was not sustainable.

Having said that, I spoke during second reading, I spoke during the election campaign of my support for the work of the former Progressive Conservative member of Parliament, Father Sean O'Sullivan, when he identified in 1987 a need for advocacy for the vulnerable in our society. He was very clear in his recommendations that legislation was needed. One of the things that concerns me greatly is that the consultations which are being and have been undertaken by the Minister for Citizenship, Culture and Recreation, Ms Mushinski, clearly say that legislation is not an option.

I share the concern expressed by Mr Marchese that what that will mean is that it will not have the kind of scrutiny of a public hearing, committee work. It will also not have enforceability to ensure the kind of coordination takes place that Father O'Sullivan envisioned. I hope the government will reconsider, because it should not be a basic principle of your consultation that there will be no legislation.

One of the things that I think identifies and differentiates the three philosophies around this table is the fact that my colleagues in the New Democratic Party feel that there is a major and important role for government to play in the delivery of these services. That's a philosophy that we saw during their time in government, and it related to long-term care and so forth. We take issue with the how, even though I think all three parties express a view that advocacy services and support for our vulnerable persons are a necessity. They believe it should be government that runs it.

The Conservatives, on the other hand, by saying, "No law," suggest no role for government. I would like to put forward the view that government's role is to ensure that coordination, not necessarily to deliver the services; in

fact, I believe government should only deliver services of there is no other option. I think Father O'Sullivan saw a very significant other option. He was a Conservative and his view of a shared advocacy model encouraged and supported the role of volunteers in support of advocacy. He recognized the need for education and training for the establishment of those standards against which advocates could be held accountable. Accountability was a very important part of his vision in response to the needs of vulnerable persons.

I would say to this government that to repeal this legislation today, without having put in place some alternative, breaks faith with the people you told during the election that you shared Father O'Sullivan's concern about services and the advocacy services for the most vulnerable in our society.

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It's with that sentiment that I will be supporting this amendment, because I believe that before you repeal, you have an obligation to let people know what you're going to put in its place. It's that simple. I don't think there's such a big rush, because, frankly, you've done it and you could contain the resources available. So this isn't a question of cost. That's not why you have to rush to repeal this act. You can contain the cost; you control the purse-strings.

But to repeal the legislation before you have your alternative in place is a broken promise and a breach of faith, and it sends the wrong message. I think you had a pretty good idea of what it was you wanted to do: the consultations that did not take place before this legislation and should have taken place, because frankly, notwithstanding what your ministers have said, I have repeatedly requested the presentations, deputants, presenters to tell us, were they able to meet with the minister to discuss the proposals of Bill 19, and almost without exception—there were a few exceptions but not many—they all said they had not been consulted.

I'd like to offer my advice for the future. It is so much better if you consult first, not with those you see as special interest, but with all of those who have a stake in what you're doing. Their special interest is only in wanting to see good legislation. By closing them out, you create a frustration that is unnecessary and it also results in poor legislation.

It is now February 26. Your election was June 8. You formed a government as of July. This legislation was tabled in November. You could have taken the time from July till November to discuss with those people who were going to be impacted by the repeal of the legislation and by the massive changes you're making to the Consent to Treatment Act and to the Substitute Decisions Act, and I think you would have ended up with a better piece of legislation, frankly.

I also think you could have had in place your alternatives to the Advocacy Act that you are repealing with this bill. I think that would have been a better way to make law, that it would have been a better way to govern, because I also think you've missed an enormous opportunity, and the opportunity you've missed by simply repealing is getting everybody's good advice in an environment where they knew of your commitment to provide those

services at the same time as you made significant changes and repealed the commission.

You could have done that, if you had chosen then, in the context of amendments rather than outright repeal. You could have done that in the context of having people come forward saying, "We were consulted." While we may not like it all and we wish perhaps that the other had remained, the reality is, and we heard it from presenter after presenter, very few believe that the Advocacy Act and the Advocacy Commission, as brought forth by the NDP, were working and sustainable. We heard from a few who said you didn't give it a chance, but we heard from many that it was unaffordable.

In fact, we heard from the commission itself a proposal to set up a non-profit organization, as this amendment supports. That may ultimately be something that you decide to do, and frankly I hope that you do. But it would be so much easier today for us, as we debate repeal of this act, if we had some idea of what your intentions were.

I'm not going to go on at length. I'm going to conclude my remarks by saying that I will be supporting the amendment, and I'd also like to move, Mr Chairman, an amendment to this amendment that it be split so that subsections (2) and (3) stand alone for the purposes of voting.

The Chair: Do we have unanimous consent on the motion to split?

Mr Marchese: Just to speak to that portion, we have another motion following this that deals with that as a separate one, so we're not unhappy to separate the two because in effect it's the same thing, so we're all right with that.

The Chair: Do we then have unanimous consent that we are to split the motion into two parts so we deal with each section separately? Agreed? Good.

Mrs Boyd: I need some guidance from you then, Mr Chair. Are we only talking about subsection (2) now or are we speaking to both sections? Is it simply the vote that's been—

The Chair: Subsections (2) and (3), as I understand, we're splitting into two separate parts for voting purposes.

Mrs Boyd: For voting purposes only, not for discussion purposes.

The Chair: That's correct.

Mrs Boyd: Thank you. I would certainly want the members of the committee to think back and remember over the last three weeks the faces of the people who came in front of us and who talked about the repeal of the Advocacy Act and who talked about the need, at the very least, for this government to show that the repeal of the Advocacy Act was not yet another blow to the rights and the ability of disabled people and seniors to live in a self-sufficient and safe world.

I think my colleague Mr Marchese listed out very well the kinds of blows that the disabled and senior community believe they have experienced at the hands of this government, when they were promised in the Common Sense Revolution that indeed the rights and the privileges of seniors and the disabled would be respected by this government. That is a long litany of moves that have

been taken by this government which, consecutively and taken together, destroy the ability of the disabled to attain and maintain their self-sufficiency in the community.

One of the things that really worries me about this very simple little line in here about the Advocacy Commission being repealed without having anything to put in its place is that it is a very strong, very brief, very terse message to the vulnerable of this province that this government does not respect their needs. It is very difficult for us who met, all over this province, people from the disabled community, people who were the family members of the disabled, the family members of seniors who are gradually losing their ability to deal with life in an independent manner. I think what we are doing is saying to them that we don't care. I think it's very important, certainly from our point of view, that the government understand that that's a very bad message.

When people are vulnerable, they are vulnerable because their power and their privilege is less than those in the community. One of the things that consistently disturbed me as we went around the province and as we sat here at Queen's Park hearing deputations was that almost inevitably those who said, "Yes, let's repeal the Advocacy Act; this is a good idea," were people who enjoy power and privilege by virtue of their professions: lawyers and physicians. They were the people who said this is a really good idea, to repeal the Advocacy Act and put nothing in its place. In some cases we heard health care professionals saying they wanted a repeal of the Advocacy Act, but they were worried and they really did believe that there needed to be something to take its place and they wanted to talk about that.

But generally speaking, the whole notion that this was in any way adversarial was put forward by those people who have power and privilege and who did not want to be questioned, did not want their decisions about what should happen to vulnerable people to be questioned, did not want anyone to have the right to get the information and to access the consumer of the services to assist that person to question the professional judgement of health care professionals.

1100

If we think of the shocking—I thought very shocking—discussion we heard from Dr Singer, a well-known bioethicist whose opinions are respected worldwide on issues of medical ethics, who came before this committee and said, "There's nothing you can do legislatively that doctors will obey," telling government, basically, that doctors will resist any efforts to curb their right to make decisions on other people's part without any kind of advocacy on their behalf, I think that's a very serious thing for us to keep in mind.

We heard very clearly from people a sympathy with the government's concern around cost, and I have to confess I was somewhat surprised about that. We've heard both the Conservatives and the Liberals talk about \$18 million being too much to spend on advocacy for 15% of the population. I find it particularly offensive to hear that coming from the government side when they're quite prepared to spend \$8 billion providing tax relief to those who least require it, who have the highest percentiles of income in this province.

Eighteen million dollars is not a lot of money. In fact, it's especially not a lot of money when you think of what it saves. Many of the participants who came in front of us said that advocacy was required specifically to enable people not to be such a cost to the government, to enable people to exercise their independent rights. Think of the stories of seniors who needed that rights advice in order to remain in their own homes, in order to remain as independent people. That saves us a great deal of money in health care facilities, in long-term-care facilities, when seniors have that bit of support they need in order to stay in their own homes.

Seniors are right to be concerned that without advocacy and with this bill that's in front of us, and we'll have lots more chance to talk about that, they may be considered to be incapable simply because they are old, simply because someone else judges it to be not appropriate for them to live independently in their own homes.

Just on Thursday afternoon we heard the story about a 92-year-old who was in that position and we heard it from rights advisers, without whose help that person would be in a long-term-care facility, would be costing us as a community a great deal more, would be less independent, less able to exercise his control over his own life, and we ought to be concerned about that.

I'd like to quote from Eve Gillingham from the Family and Service Provider Advisory Committee in Thunder Bay. It's really important to understand that this government has somehow said that service providers and families are somehow pitted against each other under the Advocacy Act. What this person on behalf of her committee was saying was:

"We sympathize with the government's struggles to rein in the deficit. Nevertheless, we strongly recommend that the government not repeal the Advocacy Act unless and until some other independent system of advocacy is in place throughout the province. We believe that it is the obligation of government, not just families, service providers and volunteers, to offer support for advocacy so that the rights of vulnerable people in Ontario are respected and vulnerable people are able to make their own life decisions. Over the past 15 years, it has been demonstrated again and again that there is compelling need for a system of independent advocacy in Ontario. Please ensure that the work of the past decades will not have been wasted."

Laurie Hall from A-WAY Express, an agency founded and run by and for psychiatric survivors, made the comment:

"To us, a system that incorporates the items just outlined—which included independent advocacy, education, training and systemic advocacy—"would be the most efficient and cost-effective system. The cost of the alternatives—to do nothing or to allow things to slide along as they have been—has been enormous. To us, it's just a matter of common sense."

This government prides itself on its common sense. One of the issues that we have to look at here is cost-benefit analysis in a very broad sense. Eighteen million dollars may sound like a lot at first blush, and the government has got a lot of mileage with the public out of saying how much too expensive it is to spend this kind

of money ensuring that vulnerable people are able to maintain their own decision-making.

Mr Marchese: It'll cost you more.

Mrs Boyd: It is going to cost you a great deal more not to have this kind of a system in place. It is going to cost you not only in human terms—and the human terms, after all, ought to be far more important than the dollar terms—but it is going to cost you a great deal in terms of the way in which services are provided in this province. We believe very strongly that what most vulnerable people want is some balancing of their vulnerability so that they can be independent and so that they can make the minimal use of services.

This government talks about the assumptions behind the Advocacy Act. Let me tell you, Mr Chair, our assumption behind the Advocacy Act was very clearly that it was going to be less costly for a government to provide decent services to people if in fact they knew their rights, if in fact they were able to have the ability to act on their own behalf and make their own decisions.

It costs us a great deal every time someone makes a decision on the part of someone that leads to greater vulnerability, yet we heard story after story after story in more than 100 presentations about how that frequently happens, not out of ill will—and I think that's one of the real issues here—not necessarily out of ill will but out of a sense of one person, because the person on whose part they are acting, to whom they are providing service or whose family member they are, that somehow their ability to make decisions, their decision-making power, ought to be less than the professional and the family member.

That assumption is what makes systemic advocacy so necessary, because many of our institutions, many of our programs, are built on a sense that if people are vulnerable in some way, then they somehow have fewer privileges as citizens. They are less able to exercise the powers that they do have. We make assumptions all the time about what that vulnerability means, and those assumptions lead us to great cost.

Let's think back to the 1930s, 1940s and 1950s when our assumptions about developmentally delayed people led us as a community to put developmentally delayed people into institutions: very costly institutions, institutions that continue to cost the government of Ontario a great deal of money. Many of those people in those institutions have subsequently been found not to have been developmentally delayed but to have behavioural difficulties that led their families or their caregivers, if they were not families, to think they were better off in an institution.

The work of the previous Conservative government in beginning the move towards deinstitutionalization of developmentally delayed people, which was continued by the Liberal government and continued by our government, was an effort to say, "We made assumptions for years and years, assumptions that are costing us millions and millions of dollars that we could save and costing us millions and millions of hours of contribution by people whose rights have been taken away, whose ability to care for themselves has been questioned by those assumptions."

I think what we need to know is that if the Advocacy Act and the Advocacy Commission are to be repealed, there is some body that can help us, all of us, to understand how our attitudes lead to systemic discrimination against vulnerable people. Unless we are part of a vulnerable group, it is very easy for us to make assumptions that have no basis in reality, and we heard person after person come in front of us and say that.

I'd like to finish by talking about the comment of Mr Robert Froom, who spoke to us in Ottawa. Mr Froom is an example for all of us of what a loving family member, a strong family advocate can do for a member of a family when that person is vulnerable. He talked to us about an intergenerational vulnerability within his own family and the mistakes made by past generations and the efforts made by the current generation in order to maintain those people in dignity and at a level of health that was necessary. He reminded us, and I quote from him:

"We should all be listening carefully to the vulnerable people across this province who are having services withdrawn and their rights removed by Bill 19. At this critical time, a time when new directions are being set and difficult decisions are being made, we need the Advocacy Commission and the Advocacy Act more than ever, yet this is the very time the Advocacy Act is being repealed by Bill 19. Shame, shame, shame."

1110

We are not naïve. We do not think we can persuade the government to maintain the Advocacy Commission. We understand that politically their comments about the Advocacy Commission have put them in a position where they could not possibly not act to end the Advocacy Commission. We think it's a shame as well and share Mr Froom's view of that. But they do not have to destroy entirely the advocacy that was envisioned and enshrined in that act. It could be done.

If the almighty dollar is going to be the important thing, then the proposal to have a modified non-profit agency funded by government to do that work is not too much to ask. I think the proposed budget that was put forward was about \$3 million. Are you really prepared to tell the vulnerable people of this province, people whose numbers grow every day because of the demographics that we know and have presented to us, that \$3 million is too much to spend in order to protect their rights, in order to maintain the momentum that has happened in terms of advocacy on behalf of vulnerable people? I hope not, because if you are it indeed will be a shame.

The Chair: I remind the members that the debate is unrestricted as to time except for your good sense, which seems to be prevalent here this morning. I recognize individuals in the order they indicated interest to speak without regard to individual caucuses.

Mr Tilson: This issue of course has been debated for a considerable period of time, and I think Mr Marchese is quite right: This issue of how advocacy is going to be implemented in the province of Ontario is a typical example of how your party differs from our party. We all agree on the need for advocacy in this province. We simply don't agree with the manner and the proposal that was being put forward in your former government's legislation, the Advocacy Act. It's as simple as that.

To comment on the comments that have been made with respect to consultation, I don't think there has ever been an issue on which there has been more consultation in this province, going back during the history of your government, going back to Father O'Sullivan with his review of advocacy in Ontario, *You've Got a Friend*. Your legislation went through two sets of hearings. There were more than 200 delegates or consumer and provider groups that came to committee to make presentations on your legislation—when I say “your legislation,” I mean the New Democratic legislation—as well as hundreds more who wrote the government.

Following that were two years of intensive consultations with respect to the implementation of the act. I suspect that certainly members of the opposition—I know that I did, and I think most of the other members of the government are newly elected members, but anyone who was elected during your term held their own consultations. I know I did in my own riding and listened to groups from all sides. This is separate and apart from whatever your government did. We have spent a considerable amount of time on this issue, and it's a very sensitive issue, there's no question.

Speaking through you, Mr Chair, to Mr Marchese, you gave a very impassioned presentation on your proposal for an amendment, and I don't doubt your sincerity for one moment and I certainly thank you for your comments on the whole issue of advocacy. We agree with advocacy. We simply suggest with this legislation that there is a better approach to it.

Both members of the opposition—almost everyone who has spoken to date this morning has referred to *You've Got a Friend: A Review of Advocacy in Ontario*, Report of the Review of Advocacy for Vulnerable Adults, in 1987 during the Liberal government. I'd like to read the first paragraph of the opening remarks, the executive summary, into the record, which comes from *You've Got a Friend*:

“Ontario needs advocacy.

“More particularly, we as Ontarians need to be advocates.

“Most of us already are. We can do more.

“If we are to improve our society, we must.”

The next two issues I want Mr Marchese, who has made this amendment, to listen to.

“Primary responsibility for advocacy must remain with us as individual citizens, as families, as friends and as neighbours of Ontario's vulnerable population.

“Primary responsibility for advocacy education, and the development and support of advocacy services, is the proper role of the government.

“Therefore, this review of advocacy, having considered Ontario's needs and options, recommends a shared advocacy model for this province.

“While recognizing the need for equally dedicated, professionally trained and suitably paid advocates, this review has concluded that the heart and soul of advocacy services will depend upon caring volunteers.”

I'm going to read that last sentence again: “...this review has concluded that the heart and soul of advocacy services will depend upon caring volunteers.” That, I submit to this committee and to Mr Marchese and the

members of the New Democratic caucus who have introduced this amendment, is something I'd like you to consider when you are voting with respect to your own amendments.

Throughout all the hearings, and we've debated this—you and I have debated this. Our philosophy's different on how advocacy is going to be delivered. We've debated it in the past, we've debated it in the House, we've debated it in committee, we debate it in our own ridings, and it's clearly a difference in philosophy.

I can tell you that families I've spoken to, my own family, resent the state coming along and saying, “We can do it better.” We should be doing these sorts of things. We believe in returning to the benefits of family life, and families can look after each other. There are exceptions to that. There are examples where members of family abuse what they're doing in trying to look after their loved ones, and we believe that our legislation will be dealing with that.

As the clause-by-clause continues, we will show that the family comes first in our way of thinking and, as a last resort, the state will then intervene. If there's no one else available or if the substitute decision is being made by people and it's being abused, the state would then intervene as a last resort.

1120

Our emphasis in this legislation is respect to the family. All members of families are not evil. There are exceptions. I believe the premise of the Advocacy Act in 1992 was that families can't look after each other, that friends can't look after each other. That's what the Advocacy Act was to—my goodness, you have a power of attorney, someone prepares a power of attorney, and under your legislation an advocate could come in and intervene over the wishes of that designated person. I can tell you that caregivers, members of families found that absolutely unbelievable. They don't want the state to intervene in our lives unless it's absolutely necessary.

I will say with respect to the comments that the advocacy system is not adversarial that even from their own commission there was a presentation—I wasn't present but I believe it was this past Wednesday, where two commissioners proceeded with a judicial review among themselves.

The government will take all of the views that have been presented to date as it prepares a future direction for advocacy in Ontario and once this process is complete and the plan has obtained cabinet approval, we will come forward publicly with our approach with respect to advocacy.

We are now consulting. We are continuing to consult. With respect to some of the comments that were made by Mrs Caplan, would she prefer that we announce a new system months ago, asking us to say that these committees were a sham and that we didn't intend to listen to the views of the people of Ontario? I hope that wasn't her intention.

Our plan will conform to the stated objectives that any future initiatives should be non-legislative, non-adversarial and take into account the proper role of families, friends and volunteers in the lives of vulnerable adults.

I gather we're debating the two amendments. We're voting separately on them, but we're debating the two amendments together at the same time—I guess we'll call them (2) and (3). Dealing specifically with the first amendment, this is similar to Mr Reville's approach when he came to the committee. I can tell you that Mr Reville's approach is being considered by the government, as well as other approaches. In fact, Mr Reville's approach with respect to a non-profit, charitable corporation can be done now. You don't need legislation to do that. You can make an application for a non-profit, charitable corporation. It's done all the time. You people did it in housing, for heaven's sakes, with your non-profit housing. You did it all over the place. So that can be done now under the Corporations Act. You don't need legislation to do that now.

With respect to the second amendment, which has to do with the retention of records, we can't get rid of this information. This information has to be kept now, so the amendment's almost redundant because of the Archives Act and the freedom of information act. We can't get rid of it. Even if we wanted to get rid of it, there's current legislation that prevents us from getting rid of it. The government, under those pieces of legislation I just referred to, will retain all information and all records that have been put forward by the government.

I wanted to comment on a couple of things. The Advocacy Act, as has been mentioned, created an \$18-million agency to take over the proper roles of families and volunteers. We believe those roles should be performed by the families and the volunteers. The government should come last, and only as a last resort.

The government is committed to the interests, dignity and autonomy of vulnerable people. The Ministry of Citizenship, Culture and Recreation has already begun consultations with families, consumer groups, service providers, volunteers, members of the current Advocacy Commission—Mr Reville hopefully will continue to assist the minister and other stakeholders with respect to future direction for advocacy—as well as these committee hearings. These committee hearings: I can tell you that every presentation that was made to this committee, every written report that was presented when people weren't able to be heard but have made written submissions to this committee, will be part of our consultation process.

The Advocacy Act of course was not proclaimed until April 1995 and the commission has never provided any services besides rights advice. Rights advice will continue to be provided in a more sensible and cost-effective way under the Substitute Decisions Act. We will be discussing that when we get into the clause-by-clause section, that portion of this legislation. So the Advocacy Commission is no longer needed to provide rights advice.

When the current legislation, the Advocacy Act, is repealed, and until such time as the government's new approaches to advocacy are put in place, existing advocacy organizations, families, volunteers and self-help groups will continue to provide advocacy services just as they've done in the past. This isn't a new concept. They've been doing it for years.

Certainly, as one of the designers of the current Advocacy Commission and one of former Premier Bob

Rae's advisers, David Reville has made several suggestions on future directions for advocacy. We intend to consider those suggestions. The ministry has already begun consultations that have included Mr Reville, and his comments and proposal will be considered as the government develops its new approach.

In summary, with respect to the first amendment, this almost looks like it came from Mr Reville. I don't mean to insult Mr Marchese in that respect, but that was much of what he proposed when he came and that proposal is being examined by the government, as I have indicated, as well as a number of other approaches.

With respect to the second amendment, with respect to the retention of information, "The following material shall not be destroyed and may be used by the government of Ontario in the development and implementation of a new system of advocacy for senior citizens and persons with disabilities." The government can't get rid of this information even if it wanted to because, by law, it can't.

The Chair: Thank you, Mr Tilson. I'd be remiss if I did not introduce the two legislative counsel we have here today, Doug Beecroft and Joanne Gottheil. They were involved in the drafting of these amendments and there might be occasion where they can be of assistance in interpreting or discussing particular wordings of the amendments.

1130

Mr Michael A. Brown (Algoma-Manitoulin): I come to this debate with some sense, like Mr Tilson, that we've been through this before. I had the advantage or disadvantage of being through the first set of hearings that occurred back in, I believe, 1992 and debating these issues and I'm sure Mr Marchese and Ms Boyd were there also.

One of the dangers in talking about this is that we have these kinds of dry legal discussions about process and about these issues, and I'm sure the public when they're having a look at this are wondering, "What are they talking about?"

What we're talking about are people perhaps in Club 90 in Elliot Lake, those people who are sufferers of psychiatric disorders who are out in the community, who have great difficulty sometimes in accessing services they need, and great difficulty in knowing that they have some say in the way their lives are being ordered. Also, we're having some difficulty in families that call my office, and I'm sure Mr Tilson's and others, saying: "Look, we really need to do something. My son"—or daughter, aunt, uncle, whatever—"is having some difficulty and we don't seem to be able to get through the kind of legalities to provide the right kind of treatment".

When I hear Mr Tilson talk about repealing the Advocacy Act, I don't have a problem with that. I voted against the Advocacy Act in the first place, as I'm sure Mr Tilson did and his colleagues in the Legislature. We weren't in support of that. I'm not going to go through the reasons. I think they've been placed dramatically out there. But we do believe in advocacy. Mr Tilson has talked about the kind of huge amount of consultation that's gone on around this subject, not just this act but

this subject in general, over 10, 15 or 20 years. He talks about Father O'Sullivan's report.

How long do we have to talk about this until we come to some kind of resolution? I'm amazed, absolutely amazed. You've come to one conclusion: what somebody else did was wrong. You know that, but you don't know what's right. After all that consultation, after your members being through all this, you have the ultimate gall to introduce an act that repeals another act and then say, "But we're going to consult on what to replace it with." Mr Tilson, you're testing our credibility over here. This is remarkable.

We sit here and we hear all members talk about the need for advocacy, we hear all members talk about the real issues and yet you don't know what the answer is because you're going to consult for the answer. You know what the answer isn't, that's the NDP's bill, but you don't know what the answer is. You have to consult about that. To my mind, that just doesn't work.

We should have the ability as members of the Legislature, and through us our constituents, to say, "Mr Tilson, I don't think your plan's going to work either." We should have that ability, or to say: "Boy, you've got it right. We're going to support you. This makes sense. It's going to provide the services, it's going to do what we need and, boy, you've got it right, Mr Tilson. Hooray for you." But we don't have that ability and you have to kind of believe that over on this side we are slightly cynical about your intentions.

I suspect that two or three months from now we'll get this nice little press release from the Minister of Citizenship or whoever that says, "This is what we're going to do." It will all sound really quite nice. It'll be so fluffy and puffy that no one will be able to really discern what you're talking about and then the whole matter will be forgotten.

Mrs Caplan: Till the next inquest.

Mr Michael Brown: My colleague says until the next inquest, and perhaps that's the case.

We are deeply suspicious, cynical if you will, about your intentions. If you were up front with your intentions, we would be seeing your plan right now. You've told me that consultations have been exhaustive. You've told me they've gone on for 15, 20 years. You've told me we agree with advocacy. Yet you can't sit before me today and tell me what your plan is? You can't have it both ways, and clearly that's what you're doing.

We're saying in this province—and you know it as well as I—that there is a huge increase in the number of senior citizens. The demographics of this province are changing. That means issues around capacity, about people's ability to make decisions for themselves will increase; it's one of those things we know. Those kind of decisions made by families, made by caregivers, made by the individual, will increasingly become more common. I've been through it in my family; I know what these things are like.

These are not easy decisions to make. I think there's hardly anyone around who doesn't know, and usually they're kind of muddled through. It usually works out really quite well as long as we have caring families trying to make sure individuals can make their own decisions as

long as they're capable of making their own decisions. It's kind of a muddly process and the legalities often don't work very well, and we agree with that, but at some point, sometimes we do need some guidelines and we do need some advocacy on behalf of people.

What I really find quite offensive is for you to come and tell me that you want it both ways: "We can repeal this because we've had consultations for 20 years, but we can't put another solution in because we haven't had enough consultation." You're testing us. I'm sure that when you were sitting over here with us, and we spent four or five years sitting over on this side—

Interjection.

Mr Michael Brown: Yes, that was then, this is now—you would have been up, in your very excitable and charging way, leaping over the top of the desk here saying: "This just can't be. No government could do this." I'm just saying to you, if you sit in the chair of one of your constituents, would you believe this? Would you believe the line you're trying to preach to us today? Would you buy the fact that there's enough consultation to know that the previous answer was wrong but we really need more to determine the right answer? Come on. That's not the way it is.

I just suggest to you, in the interests of Ontarians, that you think about this for a couple of months, come back to the Legislature and we'll finish the clause-by-clause. Let's get at it, because we'll know what your plan is and we'll be able to debate the real issues and not the smoke and mirrors we seem to be talking about today. Quite frankly, we have no ability to either praise or criticize your plan because we have no ability to know what your plan is, and what really frightens me is that we suspect your plan will only be a public relations exercise.

Mr Marchese: I'm going to add a few things, based on things that I have heard. One individual said:

"It doesn't take long to say the words, 'The Advocacy Act, 1992 is repealed.' By rights, it should take longer than that. It should take more than six words to dash hopes and shatter dreams. Decades of hopes and dreams preceded the passing of the Advocacy Act in 1992. That there was an Advocacy Act at all was a minor miracle and that the Advocacy Act took the shape it did, well now, that was a major miracle."

I agree with that.

The Chair: Thank you, Mr Marchese. Oh, sorry.

Mr Marchese: It was just a brief comment; I'm quoting someone.

The Chair: You took a breath, Mr Marchese. Sorry.

Mr Marchese: One takes a breather to be able to then say what one needs to say.

Mr Tilson: Just an introduction.

1140

Mr Marchese: Exactly. My comment with respect to this repeal, these few little words, is that this government, just as with Bill 26, is going too far. The repeal of this act is going too far. My fear is that people will not trust governments as one replaces the other and does a complete abolition of everything that preceded it. It's wrong. I understand modifications, I really do, based on your personal political philosophies that drive you, as they drive us. I understand that. But to completely repeal? It's

going too far and you're losing the faith of the public, where they lose faith in governments, and it hurts you as governors and it hurts all of us as politicians when that happens. That's why I was recommending that you not repeal it altogether but that you reform it based on your own political beliefs and what you believe you've heard over the last couple of weeks. That I understand and the public understands, but complete repealing is wrong; it's gone too far.

You add, "Advocacy continues as always." I understand that. Of course it will. But we have pointed out, they have pointed out, those who have come before us, that they have less and less resources to do the job and you've taken yet another tool to do it. You've taken yet another tool that would have allowed for advocacy to have continued. That's going too far; it's wrong.

You also say, "We don't need the legislation and we're doing advocacy as it is," or, "We can just simply set up a non-profit corporation and it's done." Well, it needs legislative authority. If it doesn't have that authority, then it's the same old advocacy that Father Sean O'Sullivan spoke to and against, when he said, "The evidence presented to the review identified a clear need for a coordinated and effective advocacy system in Ontario." If you go back to the old system of advocacy, you're abandoning the vulnerable person. You're refusing to listen even to your own friends who've stated otherwise. If you say you can create this non-profit corporation without any legislative authority, where it has no authority to do things, it's meaningless.

Father O'Sullivan said many other things in terms of his research. He said: "Ontario has a mixture of fragmented advocacy services which are only available to a limited number of vulnerable adults. These services are provided largely by internal advocates employed by service providers, families and volunteer groups." They've always been there, they'll always continue to be there, but he's saying that's inadequate. "In the case of internal advocates there is a perception that they are limited by conflicts of interest which may undermine the confidence of the vulnerable adults in the service." That's what he said. We're talking about years of research, years of talking to people in the field.

"The present system lacks a clear mandate to provide advocacy services as there are no uniform standards of service or training programs for advocates and those who advocate are hampered by the lack of a clear right of access to care facilities, clients and clients' records." That's what he said. Father O'Sullivan, a former Tory member of Parliament, said "there are no...standards of service" and they're "hampered by a lack of clear right of access to care facilities, clients and clients' records."

He said, "Regrettably, the majority of our vulnerable adults, and particularly those residing in smaller communities, do not have access to any advocacy programs," and you're saying, "Let's leave it to families and leave it volunteers and those who've always done it." He said it's inadequate and in some communities there are none.

He continued by saying, "Other shortcomings of a number of current advocacy services include: underfunding"—that continues and that's getting greater, the underfunding is increasing; you're compounding the problem

Father O'Sullivan identified many years ago—"lack of resources"—getting worse—"excessive workloads"—getting worse because you're cutting them more and more each year—"lack of direction and support of advocates; lack of supervision of advocates...." Imagine what it would mean to supervise your volunteers. It means a great deal of resources, something the commission would have done. The cost was not excessive, as my colleague said, to do all this body of work that Father O'Sullivan identified, and even if it was too much for you, you could have cut that down and kept with the principles that Father O'Sullivan identified.

He continued by saying, "There are alarming numbers of vulnerable adults who have been abandoned by family and friends in long-term-care facilities in the community." He said that, we know that, people who came in front of this committee told us that, and you keep on saying what we need to do is to restore to families their power. Father O'Sullivan said, "There are alarming numbers of vulnerable adults who have been abandoned by their family and friends in long-term-care facilities...." That's what he said; that's what we know.

You're saying that previous legislation says that all members of families are evil. It's wrong to say that. Perhaps you didn't mean it to come out that way, but it's wrong to say that. Our act didn't say that. Our act gave power to vulnerable individuals to be able to have their say, to be heard, to be self-sufficient, to be independent. That's part of a civil society. It's part of what we have in the Charter of Rights and Freedoms. That's what our act gave. It didn't ever say anywhere in the act that we think families are evil. What stupid government would ever say things like that, except those that want to portray it in that way? I believe that's fundamentally misrepresenting it in a terrible, terrible way.

What we say is that there are some family members who are not doing very well in taking care of their children. What we say is—not we, but those who came in front of this committee—that there are many families who in fact are abusive, and it's supported by evidence. I'm not saying this; people in the field are saying this. Those who research abuse say that abuse happens in families and those very close to them. How many is that? There's a statistic that has been put together. There are quite a number of people, families who abuse their supposed loved ones. So you say, "Let's leave it to them"? That's what you're saying, "Let's empower families." If we empower those families, those exceptions where they're abusive, to continue to be abusive and we as a government give them the legislative authority to do so, it's wrong. If we don't deal with the exceptions which cause abuse, then we as a government have abrogated our responsibility to take care of those people. That's what we're doing.

The commission was set up to do that. Both you and some others here in this committee have said that the Advocacy Commission was adversarial. Both you and others here in this committee have said there's evidence that there was division in the Advocacy Commission. But of course there's division in any organization you set up. Does that mean, because you can point to some individual who said, "We disagree with the Advocacy Commis-

sion. We were on it and we think it's bad," you then simply say, "Let's throw it out"? You don't do that. You admit that there's a problem, we admit that there's a problem and then you deal with it. But to repeal it altogether as a governmental solution is wrong. People lose faith in you as a government and in you as governing members when you do that, and when you point and make reference to those divisions as a way of saying, "Even they said it was adversarial," I think it's wrong to do that. What we do, through conflict resolution, is say: "What's the problem? Let's fix it." You as a government say: "This is a particular problem. We want to fix that." But you don't fix it by throwing it all out.

Rights advisers were not adversarial. Rights advisers—and we had three of them or more, who came in front of this committee—said, "We're there to give advice to people, not to take the right on ourselves to tell them what to do. We identify a problem; we tell them, 'This is your right.'"

In terms of advocates and right of entry, if there's an abuse in a system, in a care facility, wouldn't you want someone with authority to go in there and fix it? Wouldn't you want that? If you don't want that, we've got a problem, and if you want that and you're taking all of that away, we still have a problem. If your answer is to throw it back to the volunteers, to the families and the same institutions who have told you—and Father O'Sullivan told you—it's inadequate, if you do that, you're abrogating your responsibility as a government and you're failing them, particularly those vulnerable ones. You're going to fail particularly the more and more seniors who are going to come into our society in the next 10, 15 years, because they will become the major part of our population. Those people will become more and more vulnerable as you cut more and as you take away the tools for them to be able to say, "We want to be independent, we want rights advice and we want the basic dignities that the Charter of Rights and Freedoms gives us." 1150

I know that those who have power and privilege in society have terrible power, and they have power to influence opinion; there's no doubt about that. The doctors came here and said the Advocacy Act was wrong, it was adversarial. We disagree with them and you agree with them, but it's incredible how power and privilege have a way of undermining processes and have a way of making vulnerable people more vulnerable by the day. I'm saddened by that.

This proposal that was suggested by Mr Reville and supported by many in the field is a modest one, and you're going too far in taking it away. On your points about the second part of this motion, where you say that you couldn't do it by law, it's interesting that when you repealed in the same way, with a few little words, the Employment Equity Act, you had no problem saying, "All of the data collected by the employers will be destroyed." It's amazing how you did that so very easily, but now you're saying here it's against the law.

But I'm glad you're saying that you're going to be keeping those data; I think that's very useful. I'm sad for the government, but sad more particularly for vulnerable people, developmentally delayed people, people with

disabilities generally, seniors who are very frail. I'm sad for them because you've taken one of the few tools that gave them the power and a voice and you've left them with nothing. We don't know what you're proposing. You'll never bring this back to committee and people won't have a say as to what it is that you're proposing, and that grieves me a lot. I'm sure it will grieve a lot of people that you have done that.

Mr Frank Klees (York-Mackenzie): I just wanted to make a couple of comments with regard to some of the points that were raised throughout the course of this discussion, really for the purpose of clarifying some of the points that Mr Marchese made. While I highly respect Mr Marchese and his passion for this issue, I do find it somewhat disconcerting that he continues to represent this government as a government that doesn't care about advocacy, continues to perpetuate the sense that we do not support and will not support advocacy in the province. Surely part of the purpose of these committees is to hear not only from members of the public but also to have an opportunity to clarify the position of the government and the intent of the legislation.

The role that we have as legislators is to ensure that the message gets out clearly so that people understand in the course of these discussions what the government's intent is. We have continually over the course of these hearings made it very clear that the government does in fact intend to support advocacy in this province, that we intend to support a process of community coordination. We want to encourage people in the community who are providing advocacy and have come forward in the course of these hearings to say that they are in the process of providing advocacy now; when asked if they would continue to do so, they assure us that they will.

So I hope that we can begin to focus in these discussions on the specific recommendations. We intend to improve the legislation. That's why we're here: to hear your recommendations and to ensure that the final product of legislation is the best piece that we can bring forward.

I'm absolutely amazed that we continue to hear that if we repeal the Advocacy Act, there will be no advocacy in the province, that there will be this void, that the vulnerable in our society will not be looked after. Let's be reminded that the Advocacy Act was introduced by the previous government, was only in effect for a matter of months, that there was effective advocacy that took place prior to it, that there will be effective advocacy post the repealing of that Advocacy Act, and that we will in fact deliver, in cooperation with the people in this province, effective advocacy.

We don't agree that it should be done bureaucratically. We have yet to see how additional layers of bureaucracy can improve delivery of service in this province. That's why, as a government, we're in the process now of undoing a great deal of damage that's been done over the years as a result of philosophies that felt that government can do everything better than the private sector or than the volunteer sector or than people in this province. Surely by now there's enough evidence to show that we cannot continue to lay on layer upon layer of government bureaucracy and expect effective service delivery.

Now, we've said that we're prepared to consult. We've said that we're prepared to listen to people, to help them, to look at various models and, yes, Mr Reville's recommendation is one of the recommendations that we're looking at. How many more times do we have to say that?

To say that there hasn't been consultation on this—again, I refer to Ms Caplan's reference earlier that there's something wrong with the fact that we don't have something in place right now before we repeal the Advocacy Act. Again, I remind you, there are many things in place in this province. Right now, as we speak, Ms Caplan, advocacy is going on in this province. You are well aware of it. It's not as though we're repealing something and there is a void of advocacy.

What there will not be is a bureaucratic structure. We have all of the information that's been gathered by that commission. We have already said that we will look at that information carefully. A lot of the work that's been done are assets of this government. We'll take the training material, we'll look at many of these things and incorporate all of those things that are positive, that we can use to advance the purpose of advocacy in the province. We're committed to doing that, but we want to do that in the most effective and most efficient way that we can.

I want to address another issue that Mr Marchese referred to earlier today and that's the issue of abuse. As we've heard in the course of these hearings, there is abuse that goes on in the province and has for years. Your answer to that seems to be that we have to have the Advocacy Commission to deal with abuse. I suggest to you that it's not advocacy that we need to deal with individual abuse events that take place. We have to go to the root of the problem as to why that abuse is there. Why is it allowed to continue in some care facilities? It's not that we need another level of government to deal with that. What we need to do is address the individual ministries under which that is taking place and deal with an effective way of getting into those institutions.

You don't need right of access through this bill into long-term-care facilities. That right of access is available in all three acts that deal with long-term-care facilities in this province now. If in fact there is an indication of abuse, inspectors have right of access to these facilities. Now, what hasn't been happening, and that's what we have to deal with here as I think an outcome of these hearings, is that now we have to redirect some of our focus into some of these other areas and ask some serious questions of the various ministries and the bureaucracy to say: "If we know that there is systemic abuse, that there is abuse taking place in some of these facilities, why aren't we dealing with it effectively under the existing legislation that we have in place?" I think all of us, as members of this government, say it's time that we started to ask those hard questions of the ministries to say, "Why are these things continuing to go on?"

But surely we don't have to create another level of bureaucracy to deal with that. What we're trying to do is become much more efficient at what we're doing as a government and ensure that more dollars get to the front lines, where we can affect the people who need the dollars most. Eighteen million dollars, Mr Marchese—and

I'm not sure if \$3 million is the right amount to saw off, or whether it's \$1 million or \$500,000; that's what we're looking at. But to say that we, as a result of repealing the Advocacy Act, are leaving a void in Ontario is absolutely incorrect.

What I'm saying to you, and the message that we're putting out to the province, is that we will continue to work with those who care deeply about advocacy. We invite them to help us build a system of advocacy that is not legislation-based but is based on effective delivery of that service. I ask you, Mr Marchese, to join with us, to work with us, and Mr Reville, with all of the wealth of information and experience that he has, and those people who've been trained to this point, to work with us to build an effective model that all of us know has to be delivered but delivered within the context of what we can afford.

The Chair: We will recess to 1:30, and at that time Mrs Caplan and Mr Parker will be the next speakers.

The committee recessed from 1203 to 1330.

The Chair: I call the standing committee on administration of justice to order, and our first speaker will be Mrs Caplan.

Mrs Caplan: I wish we had an Instant Hansard from this morning, because I listened very carefully to what Mr Klees had to say and I agree with his last sentence. I can't quote exactly, but to paraphrase—and I hope I'm being fair. When Hansard's available we can check it and perhaps I could ask Hansard to substitute his exact words for mine, if my memory—

Mr Michael Brown: It'll be fine.

Mrs Caplan: My colleague says I'm going to be fine.

He used words that, frankly, I hope he will not regret. What he said was that the government supports an effective system of advocacy, and acknowledged the need for that. As I try to give you my thoughts on this amendment to section 1, part I, which repeals the Advocacy Act, I'm not going to read into the record, once again, those comments of Father Sean O'Sullivan, who was the Conservative MP for Hamilton-Wentworth, but I'm going to tell you that the comments Mr Marchese read in were accurate, and I'm just going to repeat a couple of small things that he said, because in fact they sit with what Mr Klees and other members of the government have been saying.

Sean O'Sullivan said in his report that his report "identified a clear need for a coordinated, effective advocacy system in Ontario." That was in 1987. As my colleague Mr Brown said, we have been debating and discussing and consulting and studying the need for advocacy services, but more than that, it has been whether or not there's a role for government in the development of an effective, coordinated advocacy system.

Where I take issue with Mr Klees and Mr Tilson and the government members is that we do not have in place today a coordinated, effective system, we have a fragmented approach to advocacy services in the province. They are quite correct when they say there are a number of groups and individuals and families and friends who have been advocating on behalf of the vulnerable in our society. We also have a litany and a history of inquests

and of horror stories of vulnerable people who have been abused and abandoned.

We heard from the Ontario Nursing Home Association which came here before this committee and told us that the numbers of cases of elderly who are abandoned in the nursing homes and homes for the aged and long-term-care facilities in this province is on the increase.

And so the issues that were identified over the years, and most particularly put succinctly by Father Sean O'Sullivan, the former Conservative MP from Hamilton-Wentworth, are the same issues today only they're worse. We know that.

I also want to put on the record that where I differ from the Conservative government's approach to advocacy—their approach is repeal this and let's talk about it. That's the approach they put forward. Where I differ with them is I believe that the people of Ontario thought they had a plan. When they went to the people last spring, 1995, in an election, and they said all the things that they said and much of the rhetoric that Mr Tilson has repeated here at committee, I think—because my constituents when we had all-candidates meetings—I have to tell you I didn't hear much of this at the door when I knocked on many doors. But when we were at all-candidates meetings and I would ask a question or someone would raise the issue, there wasn't a lot of it raised. I never heard it at the doors, and I can think of one all-candidates meeting where the issue was raised. Certainly the response from my Conservative opponent suggested that Mike Harris and the Conservatives had a plan.

If my memory doesn't fail me, he used those words. "Our plan for advocacy services would include" thus and so. It is reasonable, it's a reasonable request to say, "Before you repeal something, tell us what your plan is." What we are sceptical and cynical about, my colleagues and I, is that after years of discussion and years of consultation and reports that have clearly identified the problem, you didn't consult on changes to this important legislation prior to tabling it, and you set up a consultation on what should we do for advocacy, when I think what people expected was that you would bring forward your proposals and repeal or make changes to the NDP approach.

That's why people are questioning not only your lack of a plan—they're saying, "We thought you had a plan." They're also questioning your commitment, and the very fine words from members of the government caucus are not giving anyone any assurance, because the principles under which your consultation is taking place not only suggest that you don't have a plan but that they have no idea what or when or how, and they question your commitment to what your colleague Father Sean O'Sullivan called for, which required three things: coordinated, effective and a system.

To suggest to anybody that what we have today is either coordinated or effective or a system is false. We do not have anything that is coordinated, we do not have anything that is a system, and by its very nature, that fragmentation, while there are some effective advocates out there—I don't want to diminish anything that they're doing—is not effective in achieving the goals as stated in the O'Sullivan report.

I'm not going to belabour this. The last point that I would make is, in the absence of your plan, in the absence of any suggestions for what is going to come next, and I wish I had that alternative because frankly I have a lot of respect for David Reville, I have a lot of respect for the people who came forward and who suggested that a non-profit agency was a good idea, I know that there are other alternatives. But until I know what other alternatives are on the table, I see this as an all—meaning repeal—or nothing, because you have not put forward any other alternatives.

While I support the repeal of the commission as it was constituted by the NDP, I and our caucus support O'Sullivan's urgings and call for a coordinated, effective system for advocacy. And what are the components of that? The components of that must be education. The components of that must be the development and standards against which you can measure effectiveness. The components of that must be an openness and an accountability that will allow for the development of a system as opposed to fragmentation. It doesn't necessarily mean one size fits all for every community, but it does mean understanding that there are needs in communities that are not being met, that are being overlooked.

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So I have concerns, tremendous concerns, about your commitment, and I am going to be supporting the amendment that is before us with a view that at this point it's better than nothing. Since you haven't told us what your alternatives are, there's nothing else for me to support, and we have heard support for this type of model. In that vein, I will be supporting it.

I say to the government members that when you're going to be repealing a piece of legislation that is as potentially significant as this advocacy legislation, I think you have an obligation to at least let people know where you're going.

I don't see the amendment before us as perfect. It certainly doesn't oblige the government in any way other than support for a non-profit agency. It seems to fit with your view that government, other than through some resource and support, should not be directly involved. Therefore, I think it's a model that you could well live with, and in that vein I will be supporting this amendment.

I'm not going to speak again at length on this issue, and I hope the government will consider support for this amendment, but I do want to say that I think it is important that changes be made to the existing Advocacy Act and that the Advocacy Commission be dismantled, because it has created a climate that I think has to rapidly be changed.

I get concerned when I hear the rhetoric from Mr Tilson and the suggestion that all is well in Ontario today and that there is no need for a coordinated, effective advocacy system, that you can rely wholly on well-meaning friends and family. If that were true, there would be no child abuse, there would be no elder abuse, there would not have been the horror stories that we know from the past, from institutions, whether they were mental health institutions or, frankly, some of the nursing homes and homes for the aged. We know of those stories. We

depended on organizations like Concerned Friends to alert us. We always responded in horror to those terrible stories. We know of the multitude of inquests.

Fortunately, that's not the majority, but as Sean O'Sullivan said, our role is to make sure that the minority of those vulnerable people who are potentially abused, those people who my colleague Mr Brown identified from his community—because this legislation is about people, people who are not being cared for by their family, people who have been abandoned by their family, people who have no friends, people who are vulnerable and in need because of their powerlessness and their helplessness. To deny that they exist is wrong. To deny that the situation is better today than it was in 1987 is wrong.

Just because you don't like the approach of the NDP—and I didn't like their approach; I did not vote for the Advocacy Act—just because you didn't like that approach doesn't mean you don't have an obligation to say what you do like, to give some comfort at a time when we've heard from deputation after deputation of individuals and organizations that say something is needed. To say to them, "Maybe in the future you will see something," is just not good enough, especially when you campaigned on your commitment to the vulnerable in this province. Then to say after the election, "Well, we never really had a plan. We're not really quite sure what we want to do. We know we don't want to do that. That which the NDP did is bad, but we're not going to tell you what we're going to do. We're just going to repeal that," makes people cynical. That makes people question your commitment.

This is far too serious to let go without repeating Sean O'Sullivan's words, which you read accurately, Mr Tilson, into the record; I read them into the record as well during second reading. I state very clearly that I support his intent and his goal. I do believe that there is a clearly identified need for a coordinated, effective advocacy system in Ontario and I believe that government has a role in facilitating that. Given all the fine words from the members of this committee, since you don't have a plan of your own and you're not committed to any specific amount in this amendment, this is not unreasonable for you to support.

Mr John L. Parker (York East): I will not speak at length, I'll keep my remarks brief. I want to take this opportunity just to respond to two points that have emerged so far during today's discussion. The first follows quite logically from the remarks we just heard, which underscored remarks from the Liberal caucus earlier this morning, the thrust of which is to criticize the government for introducing this legislation in its current form to repeal the Advocacy Act without presenting the alternative before the Legislature at the same time. I find that argument and that approach difficult to square with the campaign posture of the Liberal Party during the recent campaign. Right now I'm looking at page 30 of the Liberal red book. I've only got page 30; I haven't got the rest of the book with me.

Mr Michael Brown: It's good reading.

Mr Parker: It's very long reading; it's a very lengthy book. It says here that within the first 30 days of a

Liberal government a Liberal government would, "Stop the implementation of the NDP Advocacy Act, scrap the Advocacy Commission, and move to bring in legislation to meet the needs of vulnerable people." That sounds a lot like the type of thing we are doing right here. If this were to be done in the first 30 days of a Liberal government, then I wonder when they were going to work out the details of the legislation that they were going to introduce.

Mr Marchese: Later.

Mr Parker: Later. I think you're right, Mr Marchese. If they were going to do it in the first 30 days, to me there are only three propositions that make sense in the face of this pledge. One is that they already had their plan, they already knew what they were going to do and it was just a matter of unfolding it in the first 30 days. If that's the proposal, I wonder, why wasn't it introduced during the election campaign? Why wasn't it in the red book? The red book was thick enough to include the details of any sort of alternative that they might have proposed to the Advocacy Act, but it wasn't in there. The pledge to get rid of it was in there, but there was no alternative in there. So that proposal somehow just doesn't make sense to me.

Mr Klees: Maybe they were going to table it later.

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Mr Parker: Maybe they were going to work it out in their first 30 days. Somewhere in that 30-day period they were going to figure it all out; I don't know. If they were going to do it in 30 days, I wonder how much consultation they could do. I wonder how many legislators they could involve. They certainly couldn't involve very much committee time in that 30-day period. They couldn't involve very much debating time in the Legislature in that 30-day period. Frankly, I don't know whether this 30-day period refers to the first 30 days of taking office or the first 30 days after the Legislature is called; I honestly just don't know. Either way, it seems to me a very tight time frame to do something that is quite significant if they're going to accomplish all the things that seem to be implied by this commitment, given what we're hearing today, that it would be irresponsible or inappropriate or somehow indefensible to remove the Advocacy Act and scrap the commission unless and until you have the replacement all worked out in all its detail.

There's a third proposition which could be possible, and that is that the Liberal Party, at the time of the last election, recognized, as we did and as thousands of people across the province did, that the Advocacy Act was just bad legislation. Whether there was an alternative to put in place for it or not, it was just bad legislation. That logic, that argument kind of makes sense to me, given the 30-day time period that we're talking about here in the Liberal pledge. I think that just might be the answer to my question, that the Liberals recognized, as we did and as people across the province did, that the Advocacy Act, as passed by the previous government, just wasn't worth keeping around past 30 days.

The first thing to do is get rid of that, "scrap the Advocacy Commission, and then move to bring in legislation to meet the needs of vulnerable people." Now, note that the commitment here isn't to introduce legislation,

isn't to have it in place, but to move to bring it in. Well, that sounds an awful lot like, "Let's get rid of the Advocacy Act, get that done, and then we'll get to work planning something that meets those goals in a better fashion."

Mr Klees: In consultation.

Mr Parker: I would think that the Liberal Party, being honourable people, would want to consult on that matter, as my friend Mr Klees is suggesting. They would want to involve as many people as possible on that matter. They wouldn't move rashly and in undue haste to try to rush something before the Legislature, before a committee. They'd want to talk to people. They'd want to hear what other people had to say. They would want to give Mr Reville a chance to come up with an alternative.

Now, we heard an alternative from Mr Reville just in the last few weeks; not last June, not last summer, but just in the last few weeks. He had an alternative that's a \$3-million proposal. I don't know if that's the way we want to go, but at least that's a new idea that wasn't around last spring during the election or in the months following the election.

I don't know if it would have been fair to have rushed anything new in the first 30-day period without giving everyone with an interest in the matter a chance to bring their thoughts forward. Some new thoughts have emerged in the period of time that we've already given the matter.

We heard the suggestion earlier this morning that this whole subject has been debated and hashed around for years; for 10 years, for 15 years, for 20 years. Why do we still have to consult? Why do we still have to talk to people? What else do we have to learn?

That's an attitude, that's an approach, that's a proposition. It's not one that we happen to embrace, but if it is the case that the matter has been thoroughly analysed over the last 10, 15, 20 years, and if that is the position of the Liberal Party, then I would expect, being reasonable and honourable people, they would have had their proposal ready to put before the people during the election and that would be part of their 30-day proposal. Certainly within 30 days they were going to get rid of the Advocacy Act, they were going to get rid of the commission. So if they had a proposal ready to go, if all the necessary consultation had already taken place, it would be reasonable to assume that they would have had their proposal ready to put forward, particularly in view of the remarks we're hearing today.

But I kind of suspect that's not the answer. I kind of suspect the fact of the matter is that the Liberals on this matter are exactly where we are; it's just hard for them to admit it. They recognize, just like people across the province do, that we've got to get rid of the Advocacy Act; it's just bad legislation. It will take time and it will take a great deal of consulting and discussion and analysis to come up with another piece of legislation, if that's the way it's to be done. If it's to be done by legislation, it will take time to come up with something else, but in the meantime there's no reason to let a bad piece of legislation sit on the record. Those are my remarks in response to that one point.

The other point that I just wanted to touch on briefly was an argument that we heard from the NDP caucus this

morning. If I can boil it down to its basic elements, it was that the good guys care about the poor and unfortunate and marginalized and those who are vulnerable, and they prove it because they're prepared to spend \$18 million to finance an Advocacy Act to address the problem. The bad guys don't care about the poor and the marginalized and the vulnerable because they can't find it in their heart of hearts to scrape up the \$18 million it will cost to implement this legislation, which will solve all of those problems. The budget is so important to this government and finding savings is so important to this government that we're not prepared to pay the \$18 million it would cost to implement this miracle cure.

I just want to respond to that with the observation that it has not been the position of this government that \$18 million is too much to spend on a cure to the problems that we are talking about here today. You're not going to catch me saying that \$18 million is not a lot of money. I will not say that; \$18 million is a lot of money. But \$18 million is not too much to spend if it will do the job as advertised. Where we part company is not on the willingness to spend \$18 million on something that is going to do the job that should be done; where we part company is in the confidence or lack of confidence that this piece of legislation, the Advocacy Act, was going to do that job.

It is the position of this government—and I think it's the position of the Liberal opposition—that the Advocacy Act wasn't going to do the job and it would be \$18 million of public money that would be inappropriately spent. I frankly don't care whether it was \$18 million or \$50 million or 50 cents. The amount of money that's proposed for it is not the issue, and that has not been the position of this government. We have not discussed how much it costs; we've discussed whether it's any good. Our position is that the Advocacy Act and the Advocacy Commission and that whole apparatus and that whole approach to the problems we have been discussing are the wrong way to go.

The Chair: Thank you, Mr Parker. You certainly, no doubt, have stimulated some degree of debate.

Mrs Boyd: I certainly wouldn't debate with Mr Parker about the Liberals and the Conservatives being exactly the same; I have no problem with that. You're quite right, in that what they were offering is exactly what you're offering, which for the vulnerable people of this province is not acceptable.

I must say that I've got really tired of both the Conservatives and the Liberals quoting the O'Sullivan report and talking about how wonderful it was and all the rest of it. We heard again and again Mr Klees, Mr Johnson and most often Mr Clement quoting from the introduction and background to the review, the very first page. One can only assume that this government didn't go any further than the first page, and frankly I suspect the same thing of the Liberals. So let's go a little bit further.

This morning Mr Marchese talked about some of the things that were going to be necessary for advocacy to work, which included resources and included personnel and so on. But let's really look at what Father O'Sullivan came down recommending, which was the shared model of advocacy. He talked about the following "criteria and

goals of an ideal advocacy system," and that was what they were measuring these various models against. Those goals and criteria were as follows:

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"(1) Safeguards against unnecessary guardianship," with which we all agree. I think all three parties have said we have to prevent unnecessary guardianship; that is not the best way to do it. I think we're all in agreement there.

The second point was very important: "(2) Independent (from ministries affected, funding sources, providers)." So independence was required.

"(3) Encourages self-advocacy where possible (self-sufficiency, self-determination)." Certainly I think we all agree with that, and I think that one of the government's complaints is that they think proactive, independent advocacy is somehow going to detract from self-advocacy. Father O'Sullivan's reports says, no, in fact you get self-advocacy where you're teaching people by modelling the behaviour how to advocate on their behalf and you encourage them in every way possible, in a proactive way. What the government is offering is some kind of a reactive thing. In other words, those who are most vulnerable, in their most vulnerable position, need to speak up on their own behalf, with no one there to protect their interests, and put themselves in double jeopardy, and I'll talk more about that later.

"(4) Enhances role of families and volunteers." I think all of us here are agreed that part of what we need to do is make sure that, to the extent possible, supportive families and supportive volunteers are going to be there to advocate for the vulnerable. That doesn't mean that all families are equal, that all volunteers are equal or that the community can manage that kind of advocacy without having the intervention of those who are both accountable but also have the power to advocate on their behalf.

"(5) Educates (families, volunteers, community)—delabels, destigmatizes, identifies gaps in services and promotes awareness that advocacy is everybody's business." I think time after time the people who came in front of us, even those who wanted the Advocacy Act repealed said, "But we have to put in its place a body that will do that."

"(6) Flexible"—flexible enough to meet—"special needs, geographic requirements, multilingual).

"(7) Responsive (personal concern, carries forward complaints, endeavours to resolve them)." In other words, a proactive approach, not a passive approach, where someone carries those complaints forward.

"(8) Promotes cooperation with providers and ministries." We've all heard, to our great concern, that the current Advocacy Commission apparently was not able to do that well enough, and I think we all recognize that if all that was set up was an adversarial kind of a reaction, none of us thinks that's very positive. So whatever takes its place needs to promote cooperation. We need to be very clear about that. But I would just caution that it's a little hard to promote cooperation when you are identifying areas that in fact make the vulnerable more vulnerable. That sounds uncooperative, when you criticize providers, and that's exactly what we heard again and again. Providers did not like the sting of criticism. They did not

want to be told that what they, in all good faith, were providing was not what those who were vulnerable wanted.

"(9) Accessible.

"(10) Seeks improvements in programs (reformative)." In other words, is reformative, has some power to say to those running programs and planning programs and doing policy that we need to reform these programs. The programs are the problem, not the individuals receiving the programs.

"(11) Has clout." That's very important. How do you have clout? You have clout because you're legislated, you've got a job that you have to do, and no one can deny you that, because it's legislated. You ask people who volunteer as advocates out in the community what kind of clout they have when they come up against a health care provider who won't listen to them and their advocacy on the part of the vulnerable, and they'll tell you they have none.

Mr Marchese: They told us.

Mrs Boyd: They told us again and again.

"(12) Accountable." We need somebody who's accountable. If we scatter advocacy among all these various different groups, groups that represent people who suffer from one particular disease or condition or another, groups that are organized by faith communities or are organized according to a specific geographic location and so on, and if we don't have an overall look at what's happening, if we don't have an accountability built into this, it isn't going to work. It'll be little individuals out there all over the place doing advocacy work and we won't have any way of measuring or determining what the overall effect of that is and how it is furthering the cause. It'll be people reinventing the wheel again and again and again in every community across the province, and that is not the best way to help those who are most vulnerable.

Those were the criteria and the goals. Father O'Sullivan's group came up with the shared-advocacy model, and let's listen to what that shared-advocacy model was. It's not very far from the Advocacy Act, which all of you decry.

(1) "This model is based upon a sharing of responsibility for the delivery of advocacy service among government, volunteers and community groups," which indeed was envisioned by the Advocacy Commission. In fact, one of the major issues for the Advocacy Commission was to foster that, to understand what groups were out there and to give them the tools in order to advocate more effectively. That was built into the Advocacy Commission's mandate and its role.

(2) "It is an evolutionary/slow-growth model which draws upon the successful experience of the Ontario legal aid clinic funding program by encouraging community groups to develop advocacy service programs to meet the particular needs of their community and to apply for funding these programs."

(3) "Implementation of shared advocacy will occur over a period of two to three years. The first step is the establishment of a provincial Advocacy Commission with a clear mandate to provide non-legal advocacy services to vulnerable adults residing in all institutions and care

facilities and in the community”—a really good description of the Advocacy Commission as formed by the Advocacy Act.

Mr Tilson: Mr Chairman, on a point of order: I have no problem with Mrs Boyd continuing on with her debate in the form that she's giving it as long as we understand that the debate we're proceeding with deals with both the amendment and the section.

Mr Marchese: Absolutely.

Mrs Boyd: Absolutely.

Mr Tilson: I don't want to go through all this again when we start talking about the—if Mr Marchese's amendments are defeated, I don't want to hear the same bit again with respect to section 1.

Mrs Boyd: With respect, average intelligence sometimes takes six tellings.

Mr Tilson: I have learned for the last four years that that doesn't necessarily apply, but if I have your undertaking that it won't continue, that's fine.

Mrs Boyd: (4) "Responsibility for the provincial program is vested in an independent Advocacy Commission which is to be appointed by the Lieutenant Governor in Council"—another good description of the current Advocacy Commission.

(5) "The commission will report to the Legislature through the Attorney General or a redesignated standing committee on the Ombudsman and advocacy." That wasn't the way that was expected to be. It was supposed to go through the Minister of Citizenship, Culture and Recreation, as I recall in the act.

(6) "Legislation should be developed which also contains clear statutory authority"—statutory authority—"for trained and certified advocates to have access to institutions and care facilities where vulnerable adults reside, and in the case of those living in the community, the right to meet in private." We heard again and again from the vulnerable groups represented in front of our committee that unless you have that right of entry and that guarantee that you can meet in private with people, you cannot advocate on their behalf.

(7) "The legislation should also provide authority for certified advocates to have access, with the consent of the patient, to the patient's medical and treatment records." Again, without having that access, again with the consent of patients, it's very, very difficult for people to advocate on their behalf.

(8) "The commission would maintain a small central office with staff experienced in the following areas: training and education; the needs and concerns of frail elderly, developmentally disabled, psychiatrically disabled and physically handicapped persons; and relevant legal issues." As government bureaucracies go, if one looks at the organization of the commission, that's precisely what the commission was.

Last, "Direct advocacy services would be provided through regional offices covering the province and through local advocacy programs." In fact, the way in which the Advocacy Commission had developed to the point where it was stopped, it was an even leaner situation than that. They didn't set up regional offices, they set up individuals out there in the community at the end of a beeper and a centralized dispatch service to assist

them. So it was even leaner than was envisioned by Father O'Sullivan.

It's important to get that on the record, because we hear how wonderful the introductory comments are about all of us sharing the responsibility for advocacy, and we haven't heard that what Father O'Sullivan envisaged was very much what the Advocacy Act created. Both the Conservatives and the Liberals have praised Father O'Sullivan to the skies, yet what he recommended neither of them think is appropriate, and I think it's very important to know that.

It is really difficult for us to engage in a discussion about the supposed bureaucratic convolutions of the Advocacy Commission and the cost of the Advocacy Commission, because what seldom gets acknowledged is that the Advocacy Commission, which began its work when the act was proclaimed on April 3, 1995, had its work interrupted by the withdrawal of funding early in the summer of 1995 and never was able to perform most of the tasks that were assigned to it in terms of advocacy on behalf of people.

1410

They had done a marvellous job in terms of rights advice. We were fortunate that several of the rights advisers came forward and told us what that was like, what kind of cases they actually were dealing with and the way in which they dealt with them. I think most of us know that this means of providing rights advice in fact was proactive to the extent that there was an assurance that people understood their rights, but if they decided to exercise their rights, there was some assistance in terms of making sure they knew what the process was and that the forms were filled out and all of that.

There's a fine line between advocacy and rights advice in some cases. As we go on, I know we'll talk more in many other sections about the issue around rights advice, but it's very important for us all to acknowledge that rights don't exist if people (a) don't know they exist and (b) have not got the means or the ability to pursue their own rights. That's why it is so important that we understand that the principles and the whole function of the Advocacy Act was to make sure that the rights, which supposedly all of us as Canadians enjoy under the Constitution, for a group of vulnerable people who have very little ability to ensure that those rights are being followed, with their caregivers, with their families—that they have the ability to, first of all, understand what their rights are and to exercise their rights in the appropriate way.

What the withdrawal of the Advocacy Act does, what the removal of that does, is what we heard again and again from people in the community. I urge the government to understand that putting something in its place, giving an assurance at the same time that you're withdrawing with one hand, that you will in fact replace with the other hand, is very important.

Let's remember some of the words that people were saying when they were talking about the withdrawal of it. Steve Balcom, talking in London, from the Independent Living Centre: "Speaking from years of experience in this area, of not just myself but many other colleagues, there's a naïve presumption by this current government that the voluntary sector is going to become the fourth level of

the safety net. We're not that naïve." People in that circumstance are not that naïve.

We heard again and again from those who are most vulnerable about their concerns about the value of their life to a society that is constantly focused on the bottom line of the budget. And we come back to this. Mr Parker said that \$18 million is a lot of money—and it is; none of us would say it isn't—as though it's too much money to spend on this group.

I don't think I've ever felt quite so embarrassed or uncomfortable in my role as a legislator as I was in Windsor, Ontario, when Mr Ralph Evans came before us, speaking on behalf of the Association of the Physically Handicapped in Windsor, and on his own behalf. Mr Evans has ALS, Lou Gehrig's disease, of, I believe if I recall correctly, 14 years' duration. So he has managed very well in that he is still mobile enough to come before the committee, still mobile enough to speak to us, still active enough to be able to express himself very clearly about why the Advocacy Act and the Advocacy Commission were so important to someone like him who has no family available to him and who needs to know that there is a fail-safe there if caregivers do not respect his rights.

The response that Mr Evans got from the government was quite a lengthy lecture from Mr Klees about how expensive the Advocacy Commission was and how it was not fair to expect \$18 million to go into advocating on behalf of the vulnerable. I was ashamed to sit there, as a fellow legislator, and hear that response to a person who was trying to say what it was like to be in his place, to see the view, the constantly ever more restricted view that he has as a person.

Now, I know Mr Klees to be a person who values life very highly and I know him to be a very, very strong advocate of the right of individuals to enjoy that life, so I in no way mean to suggest that he is not sincere in that. I'm just saying that the effect of that on a vulnerable person, to hear a lecture about the dollars involved, must have been a very difficult one. It was certainly difficult for me to hear.

Most of us didn't know very much about ALS probably until the Sue Rodrigues case came along in this country. Mr Evans has the same disease that Sue Rodrigues had, and we know it to be a constantly progressive disease that gradually robs people of the ability to speak on their own behalf, to look after themselves.

If we value, truly value, the lives of those who are most vulnerable, those who are disabled, those who are very often unable because of their condition or their disease to speak for themselves, then surely we must be mindful of the despair, the conviction that people in that position get from us as legislators that they're unimportant and that they, quite frankly, may as well be dead. That is a conclusion that all too many people reach when they're in these situations, and we heard from people testifying in front of us about the number of their friends and colleagues who commit suicide rather than face that constant withdrawal of their ability to be able to look after themselves. Self-sufficiency is so important. We certainly in this country are aware of how difficult that is and where it takes us when we start talking about quality of life in a way that makes assumptions about the

judgement people might make themselves about those qualities of life.

We heard people come in front of us talking about their nervousness about substitute decision-making and the kinds of consents under the Health Care Consent Act if in fact the Advocacy Act did not exist, and that was the worry that was expressed by people about the ability of others to make determinations that might affect not only the quality of their life but life itself for them.

We heard disabled people saying: "Are we in danger of being treated the way Tracey Latimer was treated? Are we in danger of having our lives seen as not being worthwhile or having any quality because of our inability to live the way the majority of society does?" That's a really big question for us. If we truly value the lives of individuals, we need to be very, very clear in our own minds that we have to do more than just say we value those lives. We have to give people the ability, the clear ability, to be able to speak for themselves or to speak through an advocate if they can't.

When we really look at the whole issue of withdrawing, what it means to people to withdraw the Advocacy Act and put nothing else in its place, let's listen again to what Dean La Bute said in Windsor, Dean La Bute of the Windsor Essex Community Advocacy Network for People with Physical Disabilities, a person without sight, a person who lost his sight in his early adult years. He said:

"We feel that Bill 19 turns a blind eye and a deaf ear to the plight of vulnerable people in Ontario. The fact remains that it absolutely seems to sweep aside the Advocacy Act and the components of that act, because from the point of view of vulnerable people, and in particular the physically disabled, we looked upon December 10, 1992, as a day of reckoning in that through the proclamation"—and I would say that I don't think he meant the proclamation, I think he meant the vice-regal consent to the bill—"of the Advocacy Act, vulnerable people in Ontario were given equal status, were provided with a level playing field with the rest of society.

"For far too long, vulnerable persons have been marginalized, ignored and have been looking from the outside in and knocking at the door to become equal partners, have equal status within society at large. In our opinion, the Advocacy Act opened that door and allowed us in. Bill 19 throws us back to the dark ages with the repeal of the Advocacy Act."

I would really urge the government members to understand that whatever your intentions are of putting something in place in the future, the damage that will be done to this community by the repeal of the Advocacy Act without something to replace it, without something that is guaranteed to them, will be very great.

1420

All through the discussions, we talked about this as being an issue of trust, and there's some truth to that. There is some truth to the fact that we ask every day vulnerable people to trust their caregivers, to trust their families and to trust us as legislators. Because they are unable to ensure their own rights themselves, they need to trust us.

Many of the government members and those who wanted to see the repeal of the Advocacy Act wanted it

repealed because they felt that it destroyed trust between caregivers and family members and the vulnerable people. I would suggest to you that exactly the opposite is true. Most vulnerable people saw the Advocacy Act as the guarantee that in fact if someone breached trust with them, there would be some recourse, there would be some way to get back their own rights if those were violated.

It was not a question of seeing the Advocacy Act as a way to intervene between caregivers or intervene in a way in that trusting situation, it was to be the medium within which that trust could build because, if there were a breach of trust, there would be recourse. The real issue is for many vulnerable people without that recourse there, they would say, to quote Mrs Caplan, that all the fine words don't mean anything. The fine words are not going to repair the trust in legislators to ensure that we are guaranteeing people's rights of looking after themselves.

It's very important, I think, that we recognize the strides that were made while the Advocacy Act was in place, and they were quite considerable. The reason that the second part of our motion talks about the materials that were gathered and the information that was gathered and the programs that were prepared by the Advocacy Commission, even though Mr Tilson assures us that of course that would be there and would be sort of just regularly there and there's no need for a legislated provision for that, frankly, our lack of trust arises out of the repeal of the Employment Equity Act. That information also should have been there, having been collected.

So of course we think we need to have a legislated guarantee that this material will be there and can be built on and can in fact be seen as things that were accomplished by the Advocacy Commission during its time, that it doesn't get subsumed and withdrawn into some other milieu. This was done under this regime. This is what can be done under this regime, and that's why it's important for us to have that there.

The last issue is the three items that we suggest should be the role of an organization that does the advocacy role. The first issue is this cross-disability approach, and I would go back to what I said earlier about the fragmentation of advocacy. Yes, there has been advocacy out in communities, and, yes, that advocacy has in many cases led to a greatly improved life situation for many vulnerable adults, but that advocacy has been fragmented. It has not been coordinated. It has often been disability-related or disease-related as opposed to looking at the common issues that those who are vulnerable and disabled face across our community.

When we first started talking about long-term care in the changes that happened in the Long-Term Care Act, we found that there was real difficulty between the elderly, who gradually are becoming more and more disabled by virtue of age, and those who have been disabled by birth, in that in fact those two groups thought that they had different goals in life. We heard a lot in the early days of consultation around long-term care that those who had been disabled early in their lives, while they were still young, had a goal of increasing their independence—that was a major goal—whereas for many of the elderly getting gradually more infirm, their concern

was maintaining the independence they had always had, to the extent that they could depending on their health, but having an assurance that help would be there as they required it in that gradual way.

One of the issues around cross-disability services is ensuring that we build the commonality of experience and that's extremely important because in that way, of course, since all of us will age and all of us need to regard ourselves as temporarily abled, if you like, that is where the common interest lies in protecting the vulnerability of those who become disabled. So while it may be difficult for those of us who are able-bodied to relate to someone who has been born with a degenerative disease like muscular dystrophy, or has been born with a disability caused by cerebral palsy, or has become disabled as a result of a car crash, what we have in common with those people is that the day will come, if we are fortunate enough to live that long, that some of our faculties also will desert us. So we are always acting in the best interests of all of the population when we act in the best interests of the most vulnerable.

Cross-disability means that we look at the things that are going to make for independence, no matter what the condition is; what is it that we need to do in order to ensure that there is safety, to ensure that there is independence for that group. That's why we think that's so important.

We've all talked about community development, education and training. Community development, though, is the aspect that's very important if we are going to rely very much upon the community in which we live, because community development means the development of the community of those who share the same disability. It means the development of the community in which those people live. It means the development of a sense of community between those of us who are able-bodied and those who are not. Community development has many nuances and it's very important.

Education and training means not just education and training for the professionals, it means education and training for the individuals who are going to be self-advocating as well as for those who are going to be advocating on behalf of those. And it means an ongoing education, so that as theories and differences in treatment and differences in daily living plans change, there is an ability to educate people about those changes as they go along.

The last issue is the one that it seems most difficult for people to understand, and that is the whole issue of systemic advocacy. It's very important, whatever is put in place of the Advocacy Commission, that we understand the issue of systemic advocacy; in other words, advocacy on behalf of the whole group of those who are vulnerable, how we do that within different circumstances. It's extremely important for us to see that as a role. I just urge the government to understand that all those things—we've now met these people across the province who were able and willing to come forward and talk to us. We know that, consistently, consumers in the area were saying they needed advocacy and they needed it legislated and they needed to know it was going to be there for them and for their friends and for their colleagues.

I would urge you not to withdraw the Advocacy Act, not to repeal that act without putting something in its place. You may want a place holder that's a little less definite, but it should have those three elements involved in it because those are the most important elements identified to us by those most affected by the need for advocacy.

The last thing I would say is that we have an obligation, it seems to me, to see governments as being the ones that stand up for the rights of individuals. We're mandated, in a way, our governments under our Constitution, to ensure that every citizen in our province, every citizen in our country, enjoys the rights guaranteed under the charter. Several of the people who came in front of us talked about their concern around the charter, sections 7, 12 and 15 in particular, being meaningless to the vulnerable and the disabled unless they had some assurance that their rights were going to be maintained and protected and advocated on behalf of by the government of their province. That is a right we all ought to have, and it is within the power of the government to ensure it is enshrined in legislation in the province. At the very least, if you are going to repeal the Advocacy Act, which again I would remind you very much followed the recommendations of Father Sean O'Sullivan, which you have all said were wonderful, we need to have something put in its place so that the vulnerable people in this province will not see themselves as abandoned once again by government.

1430

The Chair: Mr Marchese, you may have a few words for Mr Parker and the committee.

Mr Marchese: Not for him necessarily—

Mr Tilson: I want to hear from him.

Mr Marchese: Just some comments, Mr Chair. Mr Klees made some remarks earlier on about what we might have said with respect to whether or not the government is sincere about advocacy. There's no doubt that members are sincere about advocacy; we understand that. But the intent versus the effect of what you're doing are different, and I suggest that the effect of what you're doing belies the intent. That is to say, your intent is that you like advocacy, but by not doing anything and by repealing it completely, the effect is to convince the public out there that you don't care about advocacy. You might have convinced some of the folks out there that you will have delivered something at the end of the day, but I'm not sure they believe that. I'm sceptical.

Certainly, based on what I heard, I'm not getting the sense that you are moving in the direction Father Sean O'Sullivan was talking about. In fact, you are removing yourself away from it, taking only those minimal parts of the report that spoke about the need for all of society to be able to assume the moral responsibility to advocate for everybody. While that is very nice and a wonderful ideal, in itself and by itself it cannot but fail. If government doesn't set itself a plan, for example, if by some miracle all individuals out there and all groups and all families somehow internalize this moral responsibility and thus eliminate all abuse and all wrong—I'm not sure how it would work; I'm not sure it can. I don't mean we shouldn't be saying to everybody out there that every-

body has a moral responsibility to do that; I think you should. But to take away what we recommended as the NDP government is to take all the tools people said we needed to get to it.

Everybody agrees with your government, Mr Klees, that we need to support individuals, need to encourage volunteers, need to support service deliverers, need to do all that. No one disagrees with that, and no one who came in front of our committee said anything to the contrary. Neither are we. What I'm saying and what the members of the public who came before this committee said is that that in itself is inadequate. You are returning to the old system that Father Sean O'Sullivan criticized as being completely inadequate.

We know you're sincere, but that sincerity is belied by your action of repealing the entire Advocacy Act.

Mr Parker talks about a different element in all of this. He said that many of you have not argued that money is the issue, because even if it were \$18 million or \$20 million or \$30 million, that still would not be the issue. The issue, for Mr Parker, is efficacy. "Are they doing the job?" is the basic question you asked. Well, to be fair and clear, some of your members talked about money as the issue. You've raised another side of that particular issue and said, "Money is in itself not the issue, but rather whether it's effective."

A number of points emerge out of that. We never said the Advocacy Commission was the cure-all. No one has ever said that. No one in this government has said that, none of the deputants said that, Mr Reville didn't say that, no one I'm aware of said it is a cure-all—no one. They did say it was an important response to what was missing out there for those who are vulnerable, that the commission was an adequate response. Father Sean O'Sullivan's report said it was an adequate response, and we agree with that.

Did we give the commission the time to prove how much more effective it could have been? No. You're repealing it before the commission had an opportunity to be effective. We argue that in the time it had, it's done a great deal. It devoted most of its energies, in a very rapid time frame, to hire a lot of rights advisers. A lot of people applied for that particular job, a lot of training went into that, and they did it quickly in spite of the short time frame they had.

To argue that you did not have the confidence that the legislation would do the job, in my view, is not proper because we didn't give it the time to prove to you or others that it could indeed be as effective as I believe it can be, as I believe it was in the short time it was in place.

It's not, in my view, a bad piece of legislation at all. Where do I take that advice from? How am I informed by this? I'm informed by the very public that came in front of this committee. You're informed differently; I understand that. If you're informed about this piece of legislation, the Advocacy Commission and the act and rights advisers, as being a bad piece of legislation by a few doctors—not all—who came in front of this committee, and if you're informed by some of the lawyers—not all—who came in front of this committee and said it was good to repeal the Advocacy Act, you're taking informa-

tion from a group of people who do not, on the whole, represent the vast majority of vulnerable people whom all the groups I mentioned earlier represent.

We take our information from the consumers themselves and from the providers, and I mention just a brief list. There was a whole list, and I wish I'd kept the whole list in front of me: ARCH, the Toronto Mayor's Committee on Aging, A-WAY Express, Consumer/Survivor Business Council of Ontario, Dixon Hall Neighbourhood Centre and so on. There's a whole long list. I'm informed by them. If all of you are informed by the doctors and that's how you formulate your opinion about this piece of legislation as being bad, we've got a serious problem.

None of you has mentioned why it is that you think it's a bad piece of legislation. You said it's bureaucratic. Good God, is that sufficient? Some of you said it's too costly. Is that sufficient? Some of you mentioned it's intrusive. Intrusive? I'm not sure in what way. If by intrusive you mean giving people rights advice, based solely on what a rights adviser might say to an individual, "These are what your rights are," if that's intrusive, we've got a problem.

If you're talking about advocates and right of entry, to enter into a place where they have heard there is abuse, if that's intrusive, for a person to enter into an institution and say, "There's a problem here, we've got to solve it," then I say to you that we have incredible views about what's intrusive and incredible views about how we help vulnerable people.

These are the things you said were bad about the legislation: bureaucratic; another level of government, you said; too intrusive; and some of you said it's too costly. None of you has taken any of the opinions from any of the deputations that have come forth and said, "This is what the people said," none of you—other than a few lawyers making a case that it's not good and many doctors who didn't like the notion of rights advice and advocacy in general. We heard that. But to be informed by that? I'm not sure you're on the right track.

I have confidence in the commission. I have confidence that at least the modest proposal we have presented is a fair one and reflects the views of most of the consumers and most of the consumer advocates who have come in front of this committee. If you reject that, the effect of rejecting that is to say you really don't care about advocacy. You might say you care all you want, but the effect of repealing it altogether is to say to the public that you don't give a damn. Trust me, that's the opinion of the public once you've done that.

1440

Here's what some of the people said about this whole issue of vulnerable people. This is the City of Toronto Committee on the Status of Women: "Vulnerable people are simply not able to exercise the rights that many of us take for granted." That's serious. We able-bodied people take for granted certain rights, but we cannot assume the same for those who are vulnerable. But that's what you're doing with this act. By repealing it, that's what you're doing. "Vulnerable people are simply not able to exercise the rights that many of us take for granted."

I want to refer you to another submission, made by Toby Druce, from Dixon Hall. I am informed by these

submissions; if you are not informed by them, we have a problem. This is what he had to say about this whole issue of repeal of the Advocacy Act:

"The Advocacy Act was the first time the role of non-legal advocates was clearly spelled out in legislation. The act provided advocates with the tools they required to do the job." The act provided advocates the tools to do the job. "It also ensured the accountability of the tool users," something that my colleague mentioned with respect to her reading of the criteria that Father Sean O'Sullivan was talking about.

"The act established an independent body that was charged with delivering advocacy services province-wide"—another criterion my colleague mentioned. "As an institution of the government, the Advocacy Commission maintained its accountability to the people of this province through their elected representatives. As an independent body governed by representatives from consumer groups, the commission maintained accountability to its clients," another criterion mentioned.

Remember, this is an important and unique aspect of what the commission was all about. Nine of its 13 members were people with disability or seniors. They weren't lawyers necessarily, they weren't doctors necessarily, they weren't professionals. They were themselves, many of them, consumers, people with disabilities and seniors—nine out of 13. They had been nominated by seniors and people with disabilities and patients' rights activists, making them thereby very accountable to those communities.

That's why Mr La Bute said, "We feel that Bill 19 turns a blind eye and a deaf ear to the plight of the vulnerable people in Ontario," that the commission, he went on to, was a beacon of light, a source of light for them. This was their place to have a voice. It was the centre for all of them to finally be an inclusive part of what government needed to be a part of with respect to advocacy.

"In the absence of such a body," the person from Dixon Hall says, "there are no guarantees that people will have access to the information they require to make sound decisions."

"Accept that the advocacy system provides a net cost reduction to Ontario's taxpayers by avoiding costly legal actions or, more sadly, inquiries into fatal cases of abuse or neglect." That too is what my colleague spoke about earlier on in her remarks. Some of you think you're saving money by eliminating this commission, but you're not. This was a very preventive kind of action we were taking through the Advocacy Commission and rights advisers and advocates. We are saving money "by avoiding costly legal actions or, more sadly, inquiries into fatal cases of abuse or neglect." You're bringing us right back to the old system. You're not saving. You're saving in the short term but not in the long term.

"Accept any of these things and you must accept that the Advocacy Act and the resulting commission is the best, most accessible, most affordable, most accountable system ever created anywhere in the world." I didn't say that; these are the people in the field saying that.

"If you members of this committee," says he, "do not believe the vulnerable people of Ontario require an organized system of advocacy, then I encourage you to

visit with any group in your constituency who deal regularly with children, with women, with seniors, parents, grandparents, sons, brothers, sisters and daughters. The documented cases of poor people in vulnerable positions being abused are legion. And the undocumented cases are infinite."

Mr Klees says if there are abuses, we have to go back to the ministries and say: "We've got to solve this. We hear there are abuses. We've known for years. Now go out and do the work and solve it." I'm not sure it's going to happen, Mr Klees. I'm just not sure that this wonderful sense of ideal is all of a sudden going to happen, that you could go and tell the ministries—they've known this before—"There are abuses out there. Now go and do it."

What are they going to do, Mr Klees? What are the ministries' deputies going to do with that information? That's why the government and the civil servants responded by having an Advocacy Act and a commission and advocates with right of access and rights advisers. That was the response to these abuses. You're now all of a sudden saying, go back to them and tell them: "This was bad legislation. Now go find a better one. Go fix it."

I hope that's going to work—I know you're going to repeal this—but I'm not sure it will work, and I'm not sure you're going in the right direction. We were moving forward. You're going backwards.

He says, from Dixon Hall again:

"To accept the myths that advocacy is bureaucratic, expensive, intrusive or destructive to families is to accept a lie. As political representatives, your task is to make decisions that are in the common good, not simply politically expedient. Ontarians need an organized, accountable, rational and affordable advocacy system. We have that in the Advocacy Commission, and to let the commission die would be an inexcusable affront to the people of this province."

You don't have to listen to them; you don't even have to listen to me. I'm sure you're not, some of you.

Mr Tilson: Every word, Mr Marchese.

Mr Marchese: But if you don't listen to those people who are in the field dealing with children, with seniors, people with disabilities, I'm not sure who you're listening to. You think you might have made a few good friends with the doctors by doing this, but the people who are rooted in the field dealing with these problems will find your act of repeal a very shameful act.

I can tell you this: Whatever you will bring to us, I can anticipate that it will be completely inadequate, based on the things I've heard you members say in this committee. You might surprise me; I hope you will, but I'm not convinced you will. If you go far beyond what I'm suggesting, I will praise you, but I'm not sure that will happen. If you can't even vote for this minimal proposition before you, I'm not sure what you're going to propose that can be adequate or satisfy the needs of those people who said you're doing the wrong thing.

I want to give you the case of a rights adviser who said something interesting. There were a number of case studies we've had here. She said:

"I went to see a senior citizen who had been declared incapable by a capacity assessor under the SDA. I explained the assessor's finding that he was not capable

of managing his finances and informed him that unless he clearly voiced his objections, the public guardian and trustee would take control of managing his affairs. He was visibly upset and inquired on what basis the assessor had made that decision."

The rights adviser says:

"When I went over the assessment with him and pointed out the difference between his real assets and the responses he had given the assessor, he explained that he had been unwilling to disclose the truth about his financial responses to a stranger and had deliberately undervalued them in fear of what his individual motives were. He indicated clearly to me that he was quite capable of managing his financial situation and that he wished to continue managing his own affairs.

"In my experience, it's not uncommon for seniors to be reluctant to discuss the details of their financial affairs with others, particularly a stranger. A visit from a rights adviser protects a person when this happens."

This is a very typical example. You're taking all of that away and you're saying, and you comfortably have said: "The legislation is going to work. Families are empowered now and they will take care of them." I'm not sure what else you might have said, but you're giving families power back, and everything will be okay and you can go home now, it's quite all right. It's not all right.

These stories that the rights adviser have given in front of our committee—and if anyone witnessing these wants more stories that the rights advisers have given us, we can provide them to the public, because I'm sure the government won't give them to you. But these are real cases we're talking about. That's why we need rights advisers and that's why we needed a commission that talks about a coordination of community development, training and education and talks about systemic advocacy.

It's a little proposal, as little as \$3 million. It won't be as good as it was. It cannot ever be as good as it was; it will never be as effective as it was in its original purpose and intent and composition. But it's the least you can do to give those vulnerable people out there and those who represent vulnerable people—not the doctors, not a few lawyers, but those who are actually working with the consumers and the vulnerable individuals. Those are the people you will let down if you don't accept this little proposal today.

1450

Mrs Caplan: I must say I was provoked by Mr Parker. I just want to say one thing to him. You won the election; we lost. People expect you to implement your plan. Our plan was very different from yours, but that's not what we're here debating today. What we're here debating today is the fact that you are the government and you have a responsibility (1) to do what you said you were going to do, and (2) to be a good government and legislate and tell people, at least today, what you're going to do.

The problem we have is that you're repealing something; you made a commitment during the campaign, but you're not even implementing your own plan. To sit here and to get into a partisan debate about what was said

during the election campaign does nothing except provoke needless and ongoing debate and frustration.

What you did, what you said, was absolutely unbecoming, but more than that, I was proud to have you read into the record what we would have done. The fact that we don't have a chance to do it is academic. I accept the democratic will of society. What I don't accept, Mr Parker, is the fact that you guys said one thing in the campaign and you're not living up to those promises or those commitments. You suggested to people that you knew what you were doing. Clearly, you didn't. That's extremely unfortunate.

In other cases, I've been thrown out of this Legislature for using unparliamentary words like "lied." I will not use that word at this time because I don't think you were specific enough during the campaign so that anyone would think you lied to them on this issue. You told them you had a plan, that you were going to move to implement protections for vulnerable persons. You never told them you were going to go back to square one to start thinking about it all over again. If what you want to do with these hearings is prolong them by baiting us, be my guest.

Mr Michael Brown: I was a little interested in the teasing of the bears routine over there that Mr Parker presented to us. I would suggest to him he's exactly right. The commitment we made was to dismantle the Advocacy Commission, and the commitment we made was to move on legislation within 30 days. You're right. We're guilty; we didn't do it.

The point he seems to have missed is that the electorate made another choice. I think our commitment was a good one. If that wasn't your commitment—and I thought it was; I thought there was quite a bit of similarity on this particular issue. Having sat with various members of your party back in 1992, I thought on this particular issue there was, while not total agreement, strong agreement on most items that the NDP was moving in the wrong direction.

There was one solid difference. We said that within 30 days we would move on legislation. We missed it. Hey, we didn't move on legislation—guilty. But we weren't the government.

The commitment was that there needed to be legislation. I still believe there needs to be legislation. This is not going to work without some legislation. You can't sit at this committee, as we all did on Thursday afternoon and listen—I'm sorry, I don't remember the person who came from Parkdale legal clinic. The power of her presentation to us, the emotion, tells you that this isn't just about words and legalities; it is about a sense that some people in this society are not being able to inform their caregivers of what it is they want and that they don't believe their wishes are going to be respected. If you don't understand that, you don't understand anything at all, and none of us should really be here.

We are all sort of amazed when you talk about your commitment to advocacy and your commitment to the underdog in our society, because we have not seen, since June 8, one iota of evidence that this government cares for anything but the richest and the strongest in society. You believe everybody is going to be better off if the

élite is better off and somehow it trickles down and gets to everybody.

But what we're here today talking about is probably the least able to deal with any of these questions. Your government, which insists that if the rich and the powerful and the élite are better off, everybody else is—you can understand the scepticism we have, the real scepticism and cynicism that you're going to do anything. I don't think you are. I think we're going to see some fancy words a couple of months from now; I think there's going to be zip-all happening. If you want to find us guilty of not keeping our election promises because we weren't elected, I'm guilty, but so what? It's your responsibility. You have the responsibility to govern and you have the responsibility to govern for somebody other than the top 10% in this province.

Mr Klees: I'd like to take a couple of minutes and address comments Mrs Boyd made earlier. With respect, I've come to highly regard Mrs Boyd, and I know that the legislation introduced by the previous government was introduced in an attitude of truly wanting to help the vulnerable in Ontario. I don't in any way impute any cynical motivation to anyone.

What I would like to do is clarify the record somewhat, and perhaps I should be doing this as a point of order, I'm not sure; I don't want to interfere with the process here. But I do think that for the purpose of the record, if I was perceived as lecturing Mr Evans at that time, I highly regret that and certainly am prepared to write a letter to Mr Evans to express that. I'd like to read into the record, however, what I did say at that time. It's interesting how we've been discussing this issue for a number of weeks now and the message seems to be the same.

I stated at that time to Mr Evans:

"It distresses me somewhat when I hear my friend Mr Marchese repeatedly make the statement in this committee that the government is setting aside advocacy and suggests that because we're not implementing an act, because we're repealing an act, we don't care and that advocacy is not important us. For the record, I want to state this again very clearly: We believe vulnerable people need assistance. However, we cannot afford \$18 million at this time to provide the kind of bureaucratic structure that the previous government intended. In fact, in these discussions...we have heard even Mrs Boyd make the statement that there are some things with that previous act that don't work very well. I think what's important is that people like yourself have the strong assurance from our government that we care very much about advocacy, that we support it, that we want to find the most effective and cost-effective way of delivering that and ensuring you're supported."

1500

I think it's very important, and the reason I will be voting in support of repealing the Advocacy Act is that we do believe it's the right thing to do; we do believe there are more effective ways of delivering advocacy. While I haven't been around these facilities as long as Mrs Boyd and Mr Marchese, I hope I won't learn the art of imputing cynicism to the motives of another member who may disagree with me in terms of implementation of

policy. I hope we can work together, and contrary to what Mr Marchese has said, that we will not disappoint the people in Ontario, that we will be able to announce that we have an effective alternative system in place that will provide the advocacy that is so much needed in this province.

Mrs Boyd: I am very glad that Mr Klees reminded us of what was said in Windsor. It might be very kind on his behalf to write to Mr Evans, because I think he would probably feel much more comfortable in his opinion of you as a legislator if you were to do that, because I think you're right, that he may have taken you the wrong way, and that would be unfortunate indeed.

I think that expressing a belief that we ought to be able to do this in a way that is effective and that we can expect to see something effective come forward from the government at some point in time is really stretching it a little for all those groups that have participated in the consultations the Minister of Citizenship has been carrying out. Those consultations have made it clear from the very beginning, as people sit down, that the government's notion of advocacy means no new money and no legislation. So that's the ground rule: no new money and no legislation.

Group after group which came in front of us as a committee had already participated in those consultations with the Ministry of Citizenship, consultations which took place after this bill was introduced into the Legislature. They were well aware that the government had made a promise that it would do things. They came in front of our committee saying very clearly, not that they impugned your motives—although some did but that wasn't the gist of it—they just do not believe, from their experience within the community, if there isn't a legislative authority and a legislated accountability, that they'll be able to do the job.

Certainly, when we talk about no new money at a time when the budgets of virtually every one of the organizations which came in front of us have been reduced substantially, to be able to do this kind of work takes money. It takes money to train people. It takes money to ensure that people are available 24 hours a day. It takes money to get the information out to the professionals so that they know what is available.

It takes money to supervise and make sure that the ethical ways of advocating are followed, because we know there can be unethical advocates; we all know of some in this province. We know places where advocates, rather than just presenting the information and following the wishes of the person, have in fact overpersuaded people in certain directions. That is one of the reasons why there is some concern that there be accountability in any kind of an advocacy system. That does cost money.

One of the issues we heard from some of the groups coming in front of us, particularly, I believe, the PUSH groups, was that they're very worried that they might be put into a situation where they're in competition with one another for a very small pot of money to begin with.

We have only just begun to get these various disability-related groups to look at cross-disability issues. One of the real concerns they have, and I think it's a very serious concern, is that if we start, first of all, saying to

all of these groups, "Now it's your responsibility to advocate on behalf of your members," they will get into this situation of competing with one another for an ever-shrinking pot. That should concern us all, because I think that then adds to the fragmentation, means that it will be impossible for anything that the government brings forward to be satisfactory, to be anything but the target of criticism for one group or another. I don't think that's very fruitful.

Not in his last speech, but in his speech before, Mr Klees talked about needing to find some way to deal with abuse in institutions and in the family. We're certainly agreed on that. We need to find some way. I think maybe it does have a lot to do with not having been around for a while. You have a very touching faith in the ability of ministries to be able to do this. Let me just tell you that having been a Minister of Community and Social Services and been the recipient day after day of reports of abuse in institutions run by that ministry, and often finding myself the strongest advocate on behalf of the people in those institutions, I have less confidence than you do.

I think if we talk about what actual powers ministries have, particularly with groups to which they have divested services or with whom they have contracts, it is surprising how hard it is to ensure the safety of individuals living in that situation. I would say when it's not institutional, when it's out in the community, it's even harder. One of the real concerns, however much of an advocate, and I am, of long-term care moving people into and keeping people in the community as long as possible, the issue around the safety of people within the community, when they're deinstitutionalized or when they have not yet been institutionalized, is an extremely important one.

As with many of the other comments that we had, a lot of our evidence is going to come through the coroner's office, through inquests. One of the real issues, if you want to look at some of the cases—and we've got the great big book of coroners' inquests tabled with this committee, which had to do with needing advocacy on behalf of vulnerable people, advocacy in the medical area, in the policing area, in many different areas. The summary we got was only in the health care area, but the full gist of those recommendations is quite remarkable.

Recommendations from coroners' juries are only put into place with the goodwill of ministries, and they're put in place to a greater or lesser extent, depending on the vigour with which the particular ministry, and indeed the particular government in power, sees that as happening. But even when governments act to the best of their ability, there's always another step.

Mr Klees, I think, believes very strongly that with strong government action and government inspection and then bringing it home into the professions where discipline on those kinds of issues lies, we ought to somehow be able to get a sequence of events that ensures safety. I would like to believe that too. We didn't get the magic formula during the time we were in government.

Let me talk about a case, the Christopher Robin case, which happened while the Liberals were in power, a terrible case, where there was widespread information about the inquest and about the inquest results.

What was the result? That case is still in front of the College of Physicians and Surgeons. No disciplinary action has been taken, and it's years and years, and those children have been dead for years and years. We were not effective in dealing with the safety of those children. Because it was such a celebrated case, it may have made it a little bit easier for parents and others to advocate on behalf of similar children in similar circumstances, but I can tell you, if you go to visit some of the homes for special care, which is what Christopher Robin was, and look at the way in which the rules of the Ministry of Health are interpreted and applied, it's very distressing.

1510

We had deputants come in front of us who talked about the difficulty the health professions seem to have of dealing with disabled people who come to them for assistance on things other than their disability, how the disability somehow gets in the way of other common medical problems, in fact the allegation that for disabled people it is not unusual for them or their substitute decision-maker to be asked about putting a do-not-resuscitate order on a file, even though the thing the person came for care about had nothing to do about the particular disability they had.

We all expressed concern about that. We all did, and we all believe that somehow there's something unethical about requesting that kind of thing in those circumstances. I hope that Mr Klees is right, that we'll be able to come to grips with that somehow, with the professional colleges. I hope he's right, but I have less confidence because of years and years of experience of seeing these kinds of things come forward.

I'm in the odd position of having been a community advocate in areas where there was abuse within the family, so I feel very strongly that we must not be naïve about the level and the kind of abuse that is experienced by people within their own families. We'd like to be, we'd all like to be, but the reality is very clearly that a lot of the source of illness, whether it's physical or mental, for a lot of people arises out of abuse within the family.

We have to be very clear when we talk about making sure that people are safe within their communities. It's very difficult, without some kind of legislation, some kind of authority, for anyone to advocate within the family in a family care situation when someone is being abused.

The other thing we seem to have forgotten is the direct comments we had from a couple of people who were talking on behalf of providers about the difficulty for health care providers themselves, and the conflict of interest they often feel when they're in situations where they believe there's something going on and yet they themselves are in a position of dependence upon the operation.

Let me quote again from Eve Gillingham, the Family and Service Provider Advisory Committee in Thunder Bay.

"You must also recognize that there is the potential for conflict of interest between what the family and vulnerable person or service provider and vulnerable person

consider to be in the vulnerable person's best interests. In addition as service providers, we sometimes find that our organizational or professional goals are in conflict with our ability to successfully advocate on behalf of the vulnerable person. From my own experience, I know of health care professionals who have had their jobs threatened as a result of trying to advocate on behalf of a patient. Therefore, we believe it would be best to avoid any situation that may pose a conflict of interest."

I would say to you that my experience is similar. I know of health care professionals who have had their livelihood threatened when they have questioned whether or not the action being taken on behalf of a patient is in that patient's best interest. Very often those are people who are either home care providers, VON nurses, people who are looking after people within the community. Where they disagree with the treatment that has been advised, usually by a physician, or in some cases by the family themselves, they are in a very difficult position because their livelihood depends on being able to maintain their job.

These are ethical questions that legislation can't cure all in one fell swoop. The problem is we need a mechanism to know about them so that the various colleges can be informed that this is going on. It's that inability to get across the gap of being able to bring this to the attention of the group that can deal with it that we need advocates to be there for. It is important for us to recognize that in a case where someone feels they're in a conflict of interest; for example, a VON nurse who believes that the treatment, or lack of it in some cases, that has been put in a patient's file—under the Advocacy Act, if they didn't feel that they could act on their own, there was someone to call, there was someone to intervene, there was someone to be there to act on behalf of the individual.

I think that sometimes those of us who are not engaged in the health care professions have beliefs about the ability of people, individuals working within those professions, to effect change themselves that in fact is not carried through in terms of the reality of the situation.

Should it be that way? Should we need an outside advocate? I think most of us would say we shouldn't. I think Father O'Sullivan would have said that we shouldn't need that, that that should be part of the oath people take when they're engaged in the health care profession, that in fact it should be part of the obligation we owe each other as family members or as community members. But the good father was not naïve enough to think that what should be is what is, and all of us who've been to university have, at some point or another, had to deal with the fact that the "ought" and the "is" are not always the same thing. So what ought to happen very often isn't what happens. That's why you have things like advocates, because we know that vision of care very often isn't the reality that's experienced by other people. Some of us know it more immediately than others. All of us have had the benefit now of sitting together and listening to very articulate, very sincere people, all of whom did not necessarily disagree with the government, who have said this is an element we need in order to ensure safety.

Just one last comment: Mr Klees said that I have said that the act as it was did not always do what it was intended to do. I think that's true of any piece of legislation and I really don't think any of us should sit here thinking that any piece of legislation is not capable of being improved. I think experience improves things. Our experience of how the Advocacy Act was put into place, our experience of the very active hostility to the thing and lack of acceptance by certain professional groups was something we hadn't anticipated. We, like Mr Klees, believed the professionals would understand that this is the law and this is what you do, not that there would be the kind of resistance that was described to us by Dr Singer, which I know disturbed the member and certainly disturbed me.

I think we need to be very, very clear as we do our work that, with the best will in the world, we need to find ways to give better assurance to those who are vulnerable that we take what they have said seriously, that we do not discount their experience, that we in fact hear them when they say, "All this is well and good, but we really need access to proactive, independent advocacy."

We heard it again and again. The only people who disagreed were the lawyers, who I think were caught in a bit of a bind because they did admit that rights advice was probably a necessary thing, given the charter, but that they didn't like the Advocacy Act because it intervened in a way that they didn't think was very successful; and the physicians themselves, who not only said there shouldn't be outside advocates, but who also warned us that we better not require physicians to do it, because they wouldn't, and that basically our hands were tied, that we really had to accept the fact that physicians always act in their patients' best interests and that's all we need to know.

What we really need to come to a conclusion about here is, given those very differing views of what the experience is like and what the interpretation of best interests might be, that we have a problem, and the problem isn't solved by repealing this act, by simply removing it. The problem could be solved by repealing the act, if that's the wish and the desire and the commitment of the government. But putting in that there will be something and having that have the force of law, having that be in legislation that you will replace this by something that has the same effect in terms of the positive effects, that indeed fulfils those goals and those objectives that Father O'Sullivan articulated so well in 1987.

1520

Mr Tilson: We've now been at this section for almost four hours, and I understand that, certainly because this issue, particularly to the New Democratic Party, has been a very sensitive issue. It was very important to them in their government and it continues to be important to them now, and I certainly respect them for that. At the risk of provoking them—and I will try not to do that—I would like to make a couple of final comments.

Certainly I will repeat that everyone in this room is concerned about the issue of advocacy, and I guess the question is, in the debate particularly between the Conservative and New Democratic parties, how that is going to be done. That debate continues. The Liberal Party seems

to say, "We support the repeal of the Advocacy Commission but believe there should be a plan first." I believe that's their position. Mr Brown, of course, said, "How can you repeal something if you don't have something to replace it with?" But can you imagine what Mr Brown would be saying if we came forward with a plan indicating that we were going to consult? The minister did indicate that back in July. I'll just very briefly read a portion of Minister Mushinski's press release back in July 1995:

"This government is committed to the interests, dignity and autonomy of vulnerable people, but we think the Advocacy Act is a costly, complex, and overly bureaucratic approach to achieving this objective. We believe that the central role played by family members and volunteers in the lives of vulnerable people should be encouraged and supported. We will consult with families, volunteers, members of the disability and seniors' communities, the medical profession and service providers to develop a better way to support the interests of vulnerable people."

That was her undertaking at that time, and that undertaking continues. Although I'm not the parliamentary assistant for her ministry, I've been assured that is on the verge of being introduced.

To be fair to Mr Reville, who I suspect was one of the architects of the NDP legislation—I don't know that but I suspect he was, knowing how he feels about that legislation—he has come forward. If we had come forward with a plan, particularly as the Liberals had put forward, we wouldn't be able to have as an option Mr Reville's proposal. We haven't said that we're not going to support the Reville amendment; it's really the Marchese amendment, but that was his concept. We have said quite clearly, to the contrary, we will consider that concept. Hopefully, Mr Reville will continue to meet with us. We will also consider other approaches.

I think you'll find that we will have a plan, as the minister had undertaken not quite a year ago; it was July 1995. We undertook to consult with as many groups as possible. We're continuing to do that. We'll consult with people like Mr Reville. Mr Marchese wants to add his comments, and I'm sure the minister would be pleased to receive any communication from him as well.

I can only repeat with respect to the second amendment that Mr Marchese has put forward, which had to do with the destruction of material, or the request that the material not be destroyed, that the Advocacy Commission, as I understand it from the ministry staff, has never been incorporated, so that everything the Advocacy Commission owns, whether it be computers, whether it be equipment, whether it be pencils, whether it be lists, whether it be information, is the property of the ministry. As well as that, there is legislation that precludes the ministry from destroying that information. I am starting to repeat what I said before.

I only wanted to conclude by making a couple of comments in response to Mr Marchese and Ms Boyd, I believe, referring to the employment equity section. That amendment was put forward because, as I understand it, that legislation dealt with private information that had been accumulated by private groups. That's the reason why that was done. This is entirely different information.

This is government information. We've said we're not going to destroy it and legislation precludes us from destroying it. I will be opposing your amendment, but notwithstanding that opposition, I can tell you that you will get your wish because we're precluded from destroying it anyway.

Mr Marchese: But you're opposing it? Sorry.

Mr Tilson: We're opposing the amendment as you've—

Mrs Boyd: Why?

Mr Tilson: Because you don't need it; it's redundant.

Mr Marchese: But why would you worry about it then?

Mr Tilson: It's already the property of the government anyway. By law, we're precluded from destroying it; we cannot destroy it. There are at least two pieces of legislation that I know of that say we can't do it, and we're not going to do it.

The Chair: Before we go to Mr Marchese, if I could have a moment, if we can deal with this without prolonged debate, Mrs Caplan has properly pointed out to me that this committee has not established a quitting time each day. The start times have been. Mrs Caplan has suggested at least for today that we stop at 5 o'clock. Is there any objection to going till 5 o'clock today?

Mr Tilson: If I have an undertaking that we're going to finish this amendment; the list is extending.

Mrs Boyd: Are you objecting to stopping at 5?

Mr Tilson: I believe that we are close to finishing the debate on this section. If we're going to go on into tomorrow—I believe that normally the committees go till 6, but if there's unanimous consent that the debate on this topic is going to end relatively soon, I have no problem with agreeing to her request that it end at 5.

Mrs Caplan: No, no restriction.

The Chair: Perhaps we'll have to set that down, Mrs Caplan, and deal with Mr Marchese, please.

Mr Marchese: First, on the issue of the second part of my motion, with respect to whether the materials—statistical information, results of community consultations and so on—be destroyed, you pointed out that it will not be. I understand that. We don't want to argue about it. Once you've said that is the case, that's fine. That's all we need to know. But for you then to suggest that you will be voting against it simply worries not just the committee members but anybody else watching these proceedings. If you're not destroying it, then you have no problem supporting it. It shouldn't worry you to support a motion that, in effect, is going to happen anyway.

Mr Tilson: It's a meaningless amendment, with respect to you.

Mr Marchese: All right. But then humour us, Mr Parliamentary Assistant.

Mr Tilson: How would you like me to humour you?

The Chair: Excuse me. Mr Marchese has the floor.

Mr Marchese: If it's a meaningless amendment, but you're agreeing that the information will not be destroyed, then the least you could do is say, "To please Mr Marchese, because"—

Mr Tilson: He's a good guy?

Mr Marchese: —"he's a good guy and not to worry him any further, we're just going to put up our little

hand—it'll only take a second—and we'll agree with it because we're going to keep it anyway." Please don't abuse yourselves that much by voting against the amendment when you say you're not going to destroy the information.

Mr Tilson: As the debate continues, I'll see if I'll humour you. I'll consider it.

Mr Marchese: I'm so pleased with your magnanimity on that matter.

In respect to the first part of my motion, we're talking about whether or not you might have introduced a plan or not and what that means, and you responded to the Liberal member about all of that. My view has been the following: Had you brought a plan forward, that would have been very useful to us all. As you know, we have consulted—every government has—for the last 10, 15 years on this matter, and to further consult again on this particular aspect I think is a mistake. I know you want to consult further on that part; I think it's wrong.

Given that we've consulted for 15 years or so and given that the deputations before in the previous legislation that we introduced—people talked about the Advocacy Commission and the Advocacy Act and rights advisers—to consult them again simply because you've said, "We don't want that, we want to consult you about something else," is a problem because what you're in effect telling them is: "We don't agree with you. Here are some other suggestions, what do you think?" Now hopefully the public that you're consulting will say: "We agree. If that's the only thing we're going to get out of this government, we'll accept that."

1530

I believe it would have been a much cleaner process had you presented something in front of this committee that we critics would have been able to say: "That's fine. You're going to reject this, we'll deal with that and here are some suggestions we want to make with respect to your proposal." But to have nothing in place is a problem.

Yes, you might have been attacked for its inadequacy if it would have been inadequate, but that's something you would have to live with as a government. But not to allow us the opportunity to speak to something is a problem, and not just to us but the public. You would then have allowed them to speak not only to the other changes that you made to consent to treatment and substitute decision-making, but to that as well and all of their opinions on the matter would have been given to you at once as opposed to now consulting them again on this other part of it.

Frankly, I believe you made a mistake as a government in doing that and that you are prolonging the agony for all of us for yet another couple of months, all in the dark. What I urge you to do is to table your proposals to this committee again. Not to leave it unclear, not to allow us an opportunity to speak to it is a problem. I hope you'll have the courage to say, "All right, here's our proposal, we'll resubmit it for comment," and whether it's two days or three days or enough time to be able to give people an opportunity to speak to it, it matters not, but to have an opportunity to speak I think is important. I hope this

committee will have the courage to recommend to the minister and the government and cabinet that that's something that's useful to do.

I'm a bit saddened that the members of this committee, having heard all of the depositions, have not been able to convince the Minister of Citizenship in particular that they should have taken a different position on this based on what they heard. It's happened in other governments where, based on the submissions we heard, the committee members then said to the minister and to our cabinet and caucus, "We need changes here," and you could do this, but when caucuses simply put up their hands to say, "No, we will repeal it as the minister and cabinet have suggested," is a problem and it's a mistake on your own autonomy as members in this committee, having heard evidence of cases of abuse, and having heard many submissions that have spoken to what the repeal of the Advocacy Act and the commission would do.

The Ontario March of Dimes—I haven't quoted them. I want to quote them as well for the record, because what we give in this committee is not some ideological fantasy of New Democrats, it's based on what people tell us in the field. We don't invent these things because we want to please our own ideology as New Democrats. We present it because the public has made sufficient amount of strong opinion on this matter to have convinced us that we need something. The Ontario March of Dimes says the following:

"Independence, as we see it, does not simply mean the ability to perform physical activities; it encompasses an individual's ability to make decisions about all facets of his or her life, from the mundane to the extraordinary. We feel that certain aspects of this new legislation may limit individual rights and freedoms.

"The Ontario March of Dimes is primarily a service organization, assisting 10,000 people with physical disabilities in Ontario.... We are concerned about the effect of repealing the Advocacy Act and provisions of the Health Care Consent Act and Substitute Decisions Act which may make it easier for a person with a disability to be subjected to decisions beyond his or her control, or treatment he or she does not desire.

"The Advocacy Act, and by extension the Advocacy Commission, provided important resources to persons with disabilities. Together, the act and the commission—the Advocacy Commission—were designed to help vulnerable people understand their rights and express their wishes. They were also designed to promote the rights of vulnerable people and provide means to remedy situations—means to remedy situations—in which the lives of those people were at risk. With its repeal, rights advice and advocates will no longer be as readily available for vulnerable persons.

"Specifically, repeal of the Advocacy Act removes all references to rights advice and advisers. Such references are removed from the other legislation as well. For example, the requirement that individuals be advised of the right to refuse an assessment and the right to appeal an assessment, have been eliminated. It also eliminates the requirement that an individual be informed by the assessor that he or she has been found incapable. Individ-

uals still have rights, but lose the guarantee that they will be informed of what those rights are."

I wanted to quote from yet another organization that I hadn't made reference to, or my colleague, with making reference to so many other people. But these are the voices of vulnerable people, and we are not the ones saying, "Please don't repeal it" because we're specifically attached because we, as a government, NDP government, put it together and introduced it as a piece of legislation. We're not telling you to do that because we're a proud people, as a form of government, in order to satisfy our own whims. We read from their submissions to tell you that they are telling you that you're doing the wrong thing.

I believe firmly that you have done the wrong thing with the repeal of this act. All I can hope is that you will have the courage, as I've stated earlier, that once your minister has a proposal to bring, you will bring it in front of this committee and allow us and the committee an opportunity to speak to it and that we will have, if nothing else, two or three days of discussion on that particular proposal. But in the meantime, I hope that some of the members will still have time and courage to say that what is before you as an amendment is a reasonable, modest proposal to satisfy all of the organizations that have come in front of this committee with the hope that somehow you've not completely disregarded them.

The Chair: We have no further persons on—Mrs Boyd.

Mrs Boyd: Just fairly briefly, Mr Chair, one of the things that seems to have got lost in the discussion about this amendment is that we're talking about this act, the Advocacy Act, not being repealed until something else is in place. If the government doesn't like the suggestion about the specific thing that we're suggesting be put in place, they might consider at least saying that it won't be repealed. The repeal won't take place until they come forward with their plan and until it's been discussed by this committee and in fact has had some opportunity for people to comment on it.

The real issue for vulnerable people in this province is whether or not they trust the government to bring something forward. They don't want to be left vulnerable in the meantime. It's a very important issue for them. You know, I think when something has not existed and it hasn't been in place, it's never missed as much as it is once it has been in place. When people see something being taken away from them that they have learned to trust and learned to use, it's very, very difficult for them to have the kind of confidence that the government would like them to have that something else some time down the line will replace it and will meet those needs.

I guess the real issue is the abruptness of just repealing the act whenever this particular act comes into effect. Without having that in place is part of what is really exercising people. So I would urge, at the very least, as the government thinks about this, thinking about whether or not they might want to attempt some kind of friendly amendment that might meet some of the needs that have been identified by the Liberals and by us in terms of the assurance that something would replace the Advocacy Act before the Advocacy Act itself is completely gone.

1540

This will become even more urgent as we get into the issue of rights advice and how rights advice gets provided at different points in the Substitute Decisions Act and in the Health Care Consent Act. It is an issue that is particularly important in terms of—frankly, the viability of those two acts is having people understand and know their rights at a time when those rights are at stake.

I would just say that since the gist of the motion is that the Advocacy Act not simply be gone and there be a hiatus, a vacuum for a period of time which will give rise to great apprehension on the part of the vulnerable in the province, that the government members might want to see whether there is some kind of a friendly amendment that could be done.

I'm very sorry, Mr Chair, since the Advocacy Act is under the Minister of Citizenship and we keep getting her quoted at us, that in fact her parliamentary assistant isn't here and there isn't some sense of responsibility from that quarter for the repeal of this act. I think that's very unfortunate because it puts a lot of pressure on our colleagues who are the parliamentary assistants for Health and for the AG's ministry. I think that's a shame because this part of the act was under the purview of the Minister of Citizenship, and I regret very much that her parliamentary assistant who participated in many of the discussions that we had with the public is not here and not able to talk with us about the possibility of at least a fail-safe for vulnerable people in the province should the Advocacy Act be repealed.

The Chair: Thank you, Mrs Boyd. Are there any other speakers? If not, we will proceed to the first question. If there are not, firstly, we are dealing with Mr Marchese's motion—

Mr Marchese: On a recorded vote, Mr Chair.

The Chair: Yes—to amend section 1 by the addition of subsection (2). We have agreed as a committee to deal with the motion and vote on two parts, so we're only dealing with 1(2), the addition of that subsection.

Shall the amendment carry?

Ayes

Boyd, Michael Brown, Caplan, Marchese, Ramsay.

Nays

DeFaria, Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: That portion is defeated.

We are now proceeding to the second part of the motion which calls for an amendment or an addition of subsection (3). I assume, Mr Marchese, we can call that subsection (2) since that would have been subsection (2). Correct?

Mr Marchese: I think that's correct. Is it?

The Chair: Yes. Again, shall that amendment carry?

Clerk of the Committee (Ms Donna Bryce): Recorded vote?

Mrs Boyd: Yes.

Ayes

Boyd, Michael Brown, Caplan, Marchese, Ramsay.

Nays

DeFaria, Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: That second part of the motion is lost and that deals with the complete motion. If we may proceed then—

Interjections.

The Chair: Excuse me, we are now proceeding to the vote on section 1 which is unamended.

Shall section 1 be carried?

Mrs Boyd: Recorded vote, Mr Chair.

Ayes

Michael Brown, Caplan, DeFaria, Doyle, Guzzo, Johns, Klees, Leadston, Parker, Ramsay, Tilson.

Nays

Boyd, Marchese.

The Chair: Section 1 carries. I assume, Mr Marchese, that we need not deal with the second motion you had in your package.

Mr Marchese: That's correct.

The Chair: We are now proceeding to section 2. Are there any comments, questions or amendments to section 2?

Mrs Helen Johns (Huron): May I have unanimous consent to move to schedule A to deal with the Health Care Consent Act?

The Chair: Is there unanimous consent to include schedule A with the consideration of section 2?

Mr Boyd: No. Why?

Mrs Caplan: Why?

The Chair: Would you like to—

Mrs Johns: Because we were going to approve the Health Care Consent Act, and I thought we might want to go through the schedules first and have a look at the different subsections in the act, but it's really up to you.

Mrs Boyd: Part II—

Mrs Johns: I'd have to stand part II down and then go to schedule A. I guess I should have said it differently.

Mr Tilson: Part II deals with the Health Care Consent Act. That schedule she speaks of coincides with that part—

Mrs Caplan: So what you're saying is you want to deal with part II and then go to schedule A after?

Mrs Johns: No, I want to go to schedule A first and deal with schedule A, go through all of the motions and amendments we had to schedule A, come back and approve the Health Care Consent Act and then go on.

Mrs Caplan: I don't see any difficulty as long as the clerk will reorder the book that we have. The difficulty we have is that all of the motions are in an alternative order and it will take some time to put them out of order. If you want to stand down section 2 and move directly to part III, we could do that, and then reorder the amendments that are before us for tomorrow; that would be fine.

The Chair: Mrs Caplan, the amendments start on 74, but we need unanimous consent to proceed on that basis.

Mr Tilson: The intent of the request, Mrs Caplan, is that we deal with the Health Care Consent Act first, deal with anything to do with the Health Care Consent Act, then deal with the substitute decisions part of it.

Mrs Caplan: All I'm saying—

The Chair: Excuse me. Mrs Boyd.

Mrs Boyd: I would like to repeat what Mrs Caplan has said. All the material that we have, as ordered by the clerk of the committee, is in order with the Substitute Decisions Act first. It's all in that order and so it really is quite confusing all of a sudden, because we'll be dealing way at the end of our pile of amendments here. It wasn't the way it was ordered by the clerk. I understand entirely why you want to do it. I think we all kind of neglected to recognize—obviously, the Clerk's office did—that part II does tell you those health care consent things, because the way you've organized the bill, all of that is at the end of the bill.

All we're saying is, given that we're organized this way, it would probably be better if we went ahead and stood down part II, moved to part III, and did substitute decisions.

Mr Tilson: Could you give me a moment, Mr Chair. The staff, I think, were assuming you were going to deal with the Health Care Consent Act first, and now we're throwing them off—

Mrs Boyd: Should have looked at their materials.

Mr Tilson: —if you can just give me two seconds to consult.

Mrs Caplan: If I could be helpful, I think what this would require is that everything from 3 to 73 would go to the end of the amendments listed. The last amendment that I have is—

Mr Tilson: Is that right, 3 to 73?

The Chair: The clerk advises me that is correct.

Mrs Caplan: That's correct. At the end of 203 is when we would start with number 3, so there's none in the middle that would have to be pulled out. Is that correct?

Mr Tilson: We agree with that.

Mrs Caplan: Okay. So we will just reorder and 3 would become 204 or something like that. It would not be too difficult. I have no objection to accommodating it.

Mr Marchese: I'm not sure whether it's helpful, but if they were prepared, Parliamentary Assistant, differently in terms of presentation, we can easily adjourn until tomorrow and have all that work organized in such a way that we could begin our work. If that's acceptable, that's fine too.

Clerk of the Committee: If I could clarify, if there is unanimous consent, what the committee would do is postpone the consideration of section 2, go to schedule A, go through all the amendments on the sections of the schedule, and then go back to section 2 and then continue through the bill, sections 3, 4 and 5 etc. All the amendments are in your book and they are in order. It's just a matter of going to page 74, which would be the first amendment to schedule A, and continuing from there, if there's consent.

1550

Mr Tilson: Why don't we turn to page 74 and proceed?

The Chair: We need unanimous consent because, in effect, you're dealing with schedule A, which is at the end. I believe the opposition has no objection. The third party? Is that a yes or a no?

Mrs Boyd: I'm not very happy about it because it certainly wasn't what we had expected, but I don't see any reason to object to it if that is more convenient for the government. I just wish it had been clearer all along that this was what you were going to do. You need to acknowledge that the lack of clarity was such that even the clerk did not pick up on it.

Mr Tilson: Fair point, Mrs Boyd. We have two ministries and we're trying to organize two ministries, and you're quite right that there should have been—

Mrs Boyd: It should have been three.

Mrs Caplan: I know that's very difficult to do, to get two ministries to organize each other so that you can figure out and let committee members know in sufficient time so that we can prepare ourselves and organize. It know it's tough to do that and we certainly want to help you out so that you don't look as incompetent as you are.

Mr Tilson: Thank you, Mrs Caplan. We need that help.

The Chair: As there is no objection, we will proceed. Mrs Johns, are you dealing with the matter at this stage?

Mrs Johns: Yes, Mr Chair.

The Chair: If you would proceed then.

Mrs Johns: I have a little bit of an opening statement to tell you about the Health Care Consent Act. The minister addressed this group on February 5 and he said they wanted to have some changes that would honour people's wishes with respect to treatment. We have kept the government out of family matters and strengthened the family role, and we have reinforced the positive role of the health care providers.

We have eliminated needless delays for treatment of incapable people and what we have included now is a mechanism to be used by health care practitioners and others in cases where there is concern that a substitute is not following the wishes of an incapable person. We've simplified the process of admission for incapable persons into long-term-care facilities. Another important tool we have looked at is part IV of Bill 19, where we have changed the personal care.

We believe we've created a better balance with the Health Care Consent Act, but we have made some substantial amendments as a result of what we have heard over the last three weeks. We have 81 amendments that we're going to be going through today and tomorrow in the Health Care Consent Act. Forty-three of those motions are just changing a word. We're doing that as a result of hearing specific nuances within the industry itself that we felt would make the act easier for people to understand. We have 31 technical motions and we have a small number of substantive motions which we hope clarify some of the very pressing issues we have heard over the last three weeks.

The first section, section 1 of the act, the Health Care Consent Act—when I talk about “the act” I'm going to be talking about the Health Care Consent Act—talks about the purpose of the act itself. I'm quite concerned about talking about the purpose until we've pounded

through some of the amendments, because we have some alternate visions of what the purpose is and it will depend on how the amendments are processed. From my standpoint, I think it would be easier for us to hash through the purposes after we have dealt with the rest of the act.

My next question is, can I have consent to stand down section 1 of the Health Care Consent Act and move right into the definitions so that we then are sure what the purposes are because we have taken into effect the issues that people have raised in the amendments? I want to go right into the definitions.

Mrs Caplan: I have a question.

Mrs Johns: Sure.

Mrs Caplan: Could you explain for us what it means that you have "alternate visions"? Are you saying you have alternate visions?

Mrs Johns: No. Some of the amendments, some of the motions—for example, all three parties have put a motion in on a specific issue. For example, rights advice is the one I can think of right away. For example, Mrs Boyd I think has changed the purpose clause at the front of the Health Care Consent Act to take into effect how she would like to see rights advice be outlined in the act. So I think it's important to go through the amendments first with respect to the other issues and then decide what the purposes of the act are.

Mrs Caplan: Fine, thank you.

Mrs Johns: Is that okay with you?

Mrs Caplan: I appreciate the clarification.

The Chair: The suggestion has been made by Mrs Johns that now that we are at schedule A, rather than dealing with items 74 to 82, being section 1, we go immediately to 83 or subsection 1(2) of schedule A. Is there unanimous consent?

Mrs Boyd: How many more changes in order are we going to have? This is getting absolutely ridiculous here. All of our work is organized in a sequential way and it has been organized that way by the clerk of the session. It strikes me that every time we do this it gets more confusing for people. It seems to me that you set the principles, and once you have the principles set then you follow along.

I didn't quite understand what Mrs Johns was trying to express, Mr Chair. Is she saying that if she gets her way in the body of the bill, she might be prepared to consider the principles differently? I don't think that makes much sense, so I don't understand why we aren't moving forward just in a sequential way with the act. I'd like a better explanation because I really don't understand why you would want to leap into the act and away from the purpose clause and the definitions, because it seems to me, if I may be so blunt, ass backwards.

Mrs Johns: I'm certainly prepared to go the way you would like. For example, some of the amendments to the purpose clause deal with definitions, so from that standpoint, if we don't have the definition yet established it's hard to deal with the motion. That's one of the issues we have. For example, your amendment on clauses 1(a) and (a.1) deals with in some ways how the rights advice will be done. I think we really need to have some discussions about that prior to that because you talk about

advocates, for example, in that. That was really why I wanted to go through some of the definitions first.

The Chair: Is there unanimous consent? There is not, so we will proceed with schedule A. The first item I believe is that the third party wishes to make a general motion in regard to schedule A contained on page 74 of proposed amendments.

Mrs Boyd: I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "personal assistance service" wherever that expression appears and substituting in each case "service relating to activities of daily living."

We had from many of the health care providers, I think more particularly those dealing with the elderly, a request that we use the language that was used in the long-term-care legislation and has been regularly used by those facilities rather than changing it to a "personal assistance" language, which is not the language they're used to. In particular, we had a very eloquent presentation from the Alzheimer Association of Ontario and 8.1 of their presentation was talking specifically about this. Let me just quote their introduction:

"We believe that it is appropriate to formally recognize daily routines as an important component of the health and wellbeing of an individual, and important to acknowledge that many otherwise incapable people are capable of expressing wishes about their daily routines even if they are not necessarily capable of consenting to an entire treatment and care plan. We do not believe that the way this is presented in Bill 19 entirely meets this objective."

"We endorse the intent to clarify the activities of daily living as separate and distinct from treatment." So do we, Mr Chair. We think that is appropriate. Alzheimer's Ontario goes on to say, "As well, we support the concept as set out in part IV of the Health Care Consent Act to provide practitioner access to the hierarchy of substitutes bound by the requirements of substitute consent when a person is incapable of consent to personal assistance services."

1600

But their recommendations, as they come out of that, because of the common parlance, because of the way in which they've become used to it—they made two recommendations. One, that the legislation speak of "assistance with the activities of daily living" rather than "personal assistance services," and two, that the definition of "activities of daily living" be, as in the current regulations, "an activity that a person performs routinely and may include such activities as hygiene, dressing, ambulation, washing, grooming, elimination and positioning or other activities of daily living." The issue here, of course, is this need to give the greatest extent possible for individual decision-making under these circumstances and yet have an assurance that where a person may not be capable one day of making that decision, the service would still be rendered to them, whereas another day, if they are capable of deciding whether or not to participate, they would be able to do so.

I think it's that delicate knife edge that we've been talking about on these kinds of things, particularly for very vulnerable people that, when they are able to make decisions, they sometimes might make decisions that we

might wish they didn't, but it still is their right to do that, whereas we do have some responsibilities in terms of activities of daily living to ensure that incapable persons are cared for. Certainly when we come to issues like elimination—we haven't talked too much about elimination. We've talked more about nutrition and hydration, but the elimination issue, as we heard from the Clemens inquest results, in fact, is a very important issue. The decision as to when elimination is an activity of daily living, when it crosses over into treatment, is kind of an important one, and that issue around consent, which is the one that we're dealing with in this act, is important.

One would want to have the greatest autonomy possible and I think that "activities of daily living" talks about that in a very independent way. If you're talking about "personal assistance," it always puts the person in the position of being looked after, as opposed to "activities of daily living," which is all of us living our own lives to the extent possible.

So I think the language issue is—and it is, as far as I can see, strictly a language issue, not an appreciable change or substantive change. I still think it's an important signal to us all, and it certainly would meet the needs of the care providers who are used to that language, as opposed to the personal assistance language.

Mrs Johns: I just wanted to say that I totally agree with what Mrs Boyd talks about and the ability of people to understand. We have heard from two different groups, the ONA, the Ontario Nurses' Association, and OANHSS, the Ontario Association of Non-Profit Homes and Services for Seniors also, about activities of living, and we proposed an amendment also, on page 86, with respect to that. It's schedule A, subsection 2(1) of the act and we're talking about personal assistance services.

What we did was, we outlined the personal assistance service as a routine of living, an activity of living. We did this just a little bit differently than Mrs Boyd because we believe that our approach—we have taken in our amendment—works better in the legislation than the one that Mrs Boyd is providing and that it is more grammatically correct. A global motion like this would lead to some confusion in the act.

The critical thing is we want to make sure that the definition of what is a personal assistance service works with the health practitioners. We've brought our definition to the ONA and OANHSS and asked them about that and they were happy with our motion. I think the thing that is a little bit different than ours, and I just want to bring it to your attention, Mrs Boyd, is, you call it "routine of daily living" and we call it "a routine activity of living". We have done that as a result of trying to conform with the two other acts, the Regulated Health Practitioners Act, RHPA, and the Long Term Care Act. But we did check that definition with the two groups to ensure that it didn't in any way cause a problem in understanding exactly what we were implying, and we were told it didn't. From our standpoint, we would prefer to see it in the definition section, so we will be opposing it and I will be moving it again on page 86.

Mr David Ramsay (Timiskaming): I appreciate Mrs Johns' explanation, but we will be supporting the amendment because I think it spells out in clear and simple

language what the intent is. I think for people who have to deal with the act, rather than always having to refer back to the definitions, it's always there in front of you in very clear and concise language that I think is understandable for most people, what "activity of daily living" implies. So rather than having to define it elsewhere, why not put it out in clear and open language all through the act?

Mr Marchese: Just to make some comments on this, because I like the way my colleague Mrs Boyd explained this. The way it's stated, "services relating to activities of daily living", has quite an impact psychologically in terms of how people read it. It lends itself to the notion of giving people autonomy—not that "personal assistance services" may not lead to the same thing—but the language, in terms of how people read it, is different. As my other friend from the Liberal opposition said, you'd have to go to definitions to get an understanding of what you mean by "personal assistance services," in order to understand it.

So I'm listening to you saying that your language outlines what "personal assistance services" means, it works better, is more grammatically correct or cleaner, and I'm trying to understand why that is the case. What's more grammatically unclear about the language of "services relating to activities of daily living" versus the other language, which is more abstract? "Personal assistance services" is much more abstract; grammatically correct but very unclear about what it means. But if you read the other one in the act as one sees it, "services related to activities of daily living," people have a readier understanding of what we mean. Could you explain why the other one is more correct grammatically, and better wording?

Mrs Johns: I think from this standpoint, Mr Marchese, a global motion, as yours is, as the NDP recommendation is, we're afraid will be lost in the process. We also are concerned, when you hear "activities of daily living" versus "routine activities of living" that some specific things won't be done on a daily basis. For example, I may have in my chart, "bathe every second day" as opposed to daily living, so it could be the "daily" and "routine" have some issue also.

The Chair: Are there any further comments or questions in regard to the amendment? Shall the amendment carry? All those in favour? All those opposed? The amendment is lost.

We are now proceeding to schedule A, proposed amendments by the third party to clauses 1(a) and (a.1) of the act. Mrs Boyd.

1610

Mrs Boyd: I move that clause 1(a) the Health Care Consent Act, 1995, as set out in schedule A to the bill, be renumbered as clause 1(a.1) and that section 1 of the act be amended by adding the following clause:

"(a) to carry out the fundamental principles that,

"(i) the right of the individual to make his or her own decisions should be respected to the greatest extent possible,

"(ii) family members or, if there are no family members, friends and advocates, should be available to support individuals in making their own decisions, without

the individuals having to give up their right to make their own decisions, and

“(iii) supportive family and friends should be the primary substitute decision-makers where it is necessary to make decisions on an individual’s behalf;”

The Chair: Are there any comments or questions?

Mrs Caplan: We heard from several groups that it was important that the duality of Bill 19 be recognized in the preamble. We sought direction from legislative counsel as to how that could be achieved. The difficulty, of course, is that you’re dealing with two separate pieces of legislation that are in Bill 19, which is really another omnibus bill, that will then be split into two separate pieces of legislation at the end of this committee process when the bills are enacted. So it’s very difficult to get the kind of preamble that some of the groups requested that shows the duality of Bill 19, which deals with issues of guardianship under the Substitute Decisions Act as well as the right of individuals to be as independent for as long as possible to make their own decisions, and the aspects of the Consent to Treatment Act, which are to ensure that the people had given consent and were indeed able to have knowledge of their rights, because of that incapacity, to determine some way of knowing what their rights were.

There are two very distinct features of the legislation. While I’m not certain that this amendment goes the whole way in trying to do that in the legislation—because when we finish with Bill 19 and it’s reported back to the legislature, it’s my understanding that you’re going to end up with two separate acts—I think I’d like to see a preamble in each of the acts that recognizes there is a companion piece of legislation out there that has another impact. We’ve been struggling to find a way and are continuing to have those discussions to see how that could happen. I think this is an okay first step for this piece of legislation, but it certainly doesn’t accomplish the full purpose of wanting to make clear the two goals which are very distinct and very different in the two pieces of legislation.

That’s been somewhat confusing for people who come before the committee as well. On one side you’re dealing with capacity for the purpose of guardianship, which means all of your rights are taken away—that’s the Substitute Decisions Act, where you’re deemed capable or incapable, and if you’re incapable, its applications for guardianship—and secondly, under that same piece of legislation, its powers of attorney and advance directives, and that’s confusing to people. But in the health care legislation you can be deemed incapable for the purpose of a decision about care for you, which is a very different test than for statutory or full guardianship under the other legislation.

So I think that the amendment that’s been put before us which deals with some fundamental principles is reasonable in that it does try to define some of those differences and place some principles in the legislation, but I have some concerns and would like to hear some discussion and debate as to whether or not there is a way that we can make clear the two different goals of the legislation that is before us, that is: to give people the opportunity to be as independent as possible, make

decisions for themselves and to put in place a regime where they can be clear about what they would like to have happen in the future if their capacity is diminished; as well, to safeguard against the intrusive and unnecessary steps towards absolute guardianship which the substitute decisions legislation permits. That’s why we have two different kinds of assessors: the evaluator under the health care consent legislation and the assessor under the substitute decision legislation.

Many people have been confused by the different concepts all stuffed together in Bill 19. It is a complex and confusing piece of legislation, and it would be helpful if we had some defining principles in it. Frankly, I’m comfortable with this, but I’m not sure it goes the whole way to solving the issue of confusion that people have addressed when they’ve come before the committee.

Mrs Boyd: We put this in largely because we think it reflects what we were hearing from many quarters, but probably most poignantly from Mr and Mrs Clemens, who came to talk to us about the problem with the Consent to Treatment Act and how it had affected their son in his tragic death.

Basically, it’s important for people to understand that it is to be (a.1). In other words, the purpose clause starts, “The purposes of this act are” and (a) is “to provide rules with respect to consent to treatment that apply consistently in all settings.”

The Clemenses, if you recall, in their recommendations said very clearly that they hope the current legislation would be retained with respect to the principles under which those decisions were made, so that the consistency was consistency according to principles. The wording we have used is very much the kind of wording they suggested.

I take it—I’ll do this right now—that Mrs Johns is going to object, because of course, having taken the Advocacy Act out, this government wants the word “advocate” to disappear from everything, which tells everybody how difficult it is to have a whole lot of faith in the fact that you really believe in community advocacy. If you remember what the plea was from the Clemens family and from their advocates, the Reena Foundation, around the situation that happened with their son, what they were saying was, “We have to have the option of having somebody available who knows a person, who can advocate on their behalf, who doesn’t necessarily come under the rubric of family member or friend.”

Care providers very often would not describe themselves as friends of their clients; in fact, many of our professions really train people to avoid that kind of definition when they’re in a care provision relationship. I’ve spoken to enough social work classes to know that the boundary between how I regard you as a friend and how I regard you as my professional client is a very important one. We were hearing that had the people from the Reena Foundation, the advocates on behalf of Mr Clemens Jr who were supporting him in his independent living, had some standing at the hospital, and had someone at the hospital been required by principle to talk to them about what this person was like and what it meant when he was refusing consent in those circumstances, his life might have been saved.

If you are all telling us that "advocate" is not a bad word, that there have always been advocates out there and there always will be, and that you're supportive of advocacy and in fact intend to bring forward a program that will provide advocates, then by taking the word out, especially in the principle clause here, you're throwing into question what those intentions really mean. It means you are systematically removing the possibility for advocates to have any standing in any kind of situation, however important it is.

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I must tell you, I feel very strongly that you are going to deeply regret not having some standing for advocates under this health consent act, particularly given your very strongly stated position that advocacy is important and that advocacy will continue to exist and that you want to support those groups advocating on behalf of vulnerable people.

I would urge you very strongly that a lot of the fear we heard on the part of vulnerable people about people exercising substitute decision-making was that they were having a hard time believing they were really going to be protected.

Those principles are an important way to protect them, stating very clearly that the individual has the right to make decisions and that that must be respected to the greatest extent possible, that it's a binding requirement on any health care professional at the time of that whole issue around consent to treatment—that it's binding on professionals. This is where legislation becomes really important. If we don't have that in there as a principle, what will happen? You may claim that the other sections will take care of that. The people who appeared before us, including the Clemenses, did not believe that. They wanted you to know that they did not understand why you weren't including this. In their case they particularly didn't understand why you weren't granting some standing at this point to people who could advocate on behalf of those under their care.

The Chair: Mrs Caplan?

Mrs Caplan: Perhaps I'd like to speak after the parliamentary assistant. If it's true that the government has a concern because the amendment uses the word "advocate," I'd like to hear that. I'd like to hear whether they are comfortable with this amendment and then speak, Mr Chair.

Mr Marchese: I don't mind speaking now and then waiting to speak again after the parliamentary assistant speaks.

The Chair: It seems to be the habit here.

Mr Marchese: The case my colleague makes is a very reasonable one, and it's not in contradiction to whatever you have already done with respect to the repeal of the Advocacy Act. In fact, it's quite consistent with all the concerns you've already stated about your desire to support advocates out there in the field, whether they be volunteers, individuals, family members or institutions. This is not governmental, institutional intrusion being proposed here through this amendment. If for some reason you're frightened that the word "advocate" is there and that alerts you to the danger that you shouldn't support it, it shouldn't, because it's quite the contrary.

I hope the members are dealing with them in that way as you reflect on the motions, and don't just object because we're proposing them and that you as the government have a duty to oppose them. I would urge you not to do that. You see, (i) reasonably says "the right of the individual to make his or her own decisions should be respected to the greatest extent possible." It's not a frightening thought. It doesn't contradict any Conservative principles in any way. It has no political principles, in fact. It just says, "the right of the individual to make his or her own decisions should be respected to the greatest extent possible." That's a reasonable principle that I think you would support.

The second one says that family members or, in their absence, if there are no family members, "friends and advocates"—which again is consistent with all the things you have all talked about; Mr Klees and Mr Tilson, you have mentioned this—"should be available to support individuals in making their own decisions." It allows what is out there in the community to support an individual in the event there is a problem. Mrs Boyd mentioned the Clemens case, and the Reena Foundation did come before us and say, "We would have liked to have been there and been consulted because we think we could have avoided that particular problem." Again, very reasonable. Why you might object it would be of interest to me to hear.

And (iii) is "supportive family and friends should be the primary substitute decision-makers where it is necessary to make decisions on an individual's behalf." Reasonable. I guess I'm just waiting for Mrs Johns's explanation of why they may not be able to support it, or Mr Tilson's, or both.

The Chair: Is Mrs Johns deferring to Mr Tilson?

Mr Tilson: I just have a question to the proposer of the amendment. If this amendment were passed and there was an emergency situation, would not this create a problem?

Mrs Caplan: It shouldn't.

Mr Tilson: Except that (a)(ii) says "should be available." If you've got an emergency—

Mrs Caplan: You give an emergency override in the legislation. The legislation says very clearly that if there's an emergency, treatment can be given and there's no liability.

Mr Tilson: You're absolutely right, and that's the purpose of my question, and I agree that this a purpose section. However, would that not create some confusion, particularly for a doctor who has to perform something in the case of an emergency when he or she sees the words "should be available"? You're right, but it could create some sort of conflict with the emergency section you referred to. It's a question to either Ms Boyd or Mr Marchese.

Mrs Boyd: I would be more than happy to change the wording of that amendment to "should be able to be present." The problem is whether or not people are able to be present, and that is what the Clemenses were saying to us, that the representatives from the Reena Foundation had no standing. I understand what you're saying: "If you're saying they should be present, are we going to get some doctor somewhere saying, 'I can't treat because this

person isn't available'?" All we're saying is that they should be able to be there to support the person.

Mr Tilson: Doesn't the emergency section say that?

Mr Marchese: Say this?

Mrs Boyd: No. It doesn't give standing to anybody.

Mr Tilson: No, I didn't mean that. I meant that in an emergency situation, a doctor has to do something. The doctor, as I understand—I can't recall the section—has to seek out—

Mrs Boyd: No. It's an override.

Mrs Caplan: It's an override. In an emergency, the doctors can treat free from liability. It overrides everything. As I understand this clause as a principle up front, it doesn't override. In fact, the emergency clause would override it.

Mr Tilson: That's the question I'm asking. Will this create a conflict with that section?

Mrs Caplan: Well, I—

The Chair: Excuse me. That question, I thought, was asked of the third party, and I believe they've answered. We haven't heard Mrs Johns. You've been asked a question, Mrs Johns.

Mr Marchese: Before she does, Mr Chair—

The Chair: This question was from way back. This was a question asked by Mrs Caplan some time ago about the government position.

Mrs Johns: From our standpoint, we believe this purpose clause is somewhat identified in our purpose clause. If you look at (i) and (ii) in the NDP amendment, the first talks about "the rights of the individual," and the second says "give up their right to make their own decisions." We're talking about the autonomy of a person to make their own decisions, and we outline that in section (c) of our purpose section: "to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to a care facility is proposed and persons who are to receive personal assistance services." We believe we talk about that. We believe—

Mr Marchese: Could you give me a page number? Sorry to interrupt the flow.

Mrs Johns: Sure. I'm always talking about the Health Care Consent Act. I'm talking about clause 1(c), page 63, the section in the act "to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to a care facility is proposed and persons," and then we have an amendment here, "who are to receive personal assistance services." We're talking about the autonomy of the individual also, and we believe that's very important. I know Mrs Boyd and I have agreed on that all the way along.

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What we have the problem with is that in section 18 there's a clear list of who can make decisions and there's a priority, and we don't want to have that part in any way confused. For example, these people will be substitute decision-makers if they fall into paragraph 3 or they could be in 2, a power of attorney for personal care, if they are assigned in specific ways.

As Mrs Caplan explained earlier about the globalness of getting a purpose statement that brings into effect everything, we find this will cause problems because it doesn't really say they have to have a power of attorney,

it doesn't say they have to be the first person on the list for the substitute decision-maker. The outline of this could lead to more uncertainty about what the act is proposing than what we have in our purpose clause.

Mrs Caplan: That explanation was very helpful. The problem I have with the explanation is that it isn't clear and it isn't put into a position in the bill which allows a principle to be defined. You do talk about the autonomy of the person, but I'm not sure that's understood to mean the things your government has been saying.

Over and over again we have heard that you believe that the individual, the friends and the family should be enhanced and supported, and I think your hierarchy is really clear. I don't think a principle that says the individual's right to make decisions "should be respected to the greatest extent possible"—I don't think that's anywhere here in a way as clear as that in the form of a principle. You may have it in a section somewhere in the legislation, but one of the things we heard from people presenting to the committee was that you hadn't set out at the beginning of the legislation the principles that govern the legislation.

I said earlier that the difficulty with that is that there are different, conflicting principles at work in Bill 19. However, there are aspects within the Health Care Consent Act that could be governed by these principles, and the substitute consent legislation would have and could have a founding principle.

Certainly, we don't want anything that's going to create confusion in the legislation. I don't share Mr Tilson's concern about the message to a provider, because you've clarified the emergency section of the legislation now with the word "apparent." My own view, and I've said it before, is that the tragedy of the Clemenses should never have occurred. To have anyone hide behind the previous legislation I thought was appalling, and I think the finding of the inquest was very clear on that. That doesn't mean we can't improve things to make sure that doesn't happen again. I think the change you've made to the emergency clause would help, but not help enough in that kind of situation.

A suggestion that says the founding principle is the right of people to make their own decisions to the greatest extent possible, as well as having friends and—I think the word "advocate" is appropriate, since we have all agreed that there is advocacy in Ontario today. It may be fragmented, it may be provided by numerous and different organizations; they are well respected in their own communities and sometimes seen as a pain in the neck, frankly, when they come in to advocate on behalf of a vulnerable person. But that's their role. They're supposed to challenge the establishment that wants to impose its will on the vulnerable in society. Those kinds of tensions are good and appropriate.

Having something in the legislation that defines that principle is good. The difficulty, Mrs Johns, is that we've been trying to find a way to do that which wouldn't create any confusion, and I haven't been able to find the words that will do it. I don't know whether this will; maybe some parts of it will. If you have a problem with (ii), maybe we could take that out and just leave (iii), deal with (i) and (iii).

I'd like to know, could you accept any part of this to make that principle clear? If you can't have all three, perhaps we could have a vote on them individually to see what, if anything, this government will accept to ground this legislation in some principles around protection of individual rights and asserting that family, friends and those who advocate in the community do have some status, because right now we know this is a problem.

Mrs Johns: Can I have a point of clarification at this particular moment?

The Chair: It's a question?

Mrs Johns: No, it's just clarification. There were some questions. In (c)(iii), we talk about the best interests, we talk about the wishes.

Mrs Caplan: It would be helpful if you'd mention the page number.

Mrs Johns: I'm sorry, I don't have the same thing. Page 63, subclause (c)(iii), "requiring that wishes with respect to treatment," so we talk about that. In 1(e), we talk about the "significant role" of the family. The issues you were talking about I believe are laid out in our purpose clause.

Mr Marchese: She's finished, Mr Chair?

The Chair: Thank you, Mrs Johns. Mr Marchese, at long last.

Mr Marchese: To argue along the same lines as Mrs Caplan was arguing, (i) is just a general principle. It says, "the right of the individual to make his or her own decisions should be respected to the greatest extent possible." It's a right that people have spoken to, all of them, when they came in front of this committee. You make reference to different parts of the purposes of the act which connect to this but are really quite different. The language as we state it and as you refer to is rather different. You are convinced that your reference to (c)(iii) says the same thing. It's not quite the same, but I know you've convinced yourself that it is so. I thought your real objection was to (ii), which Mr Tilson was speaking to, the whole concern around "should."

Mr Tilson: No. With respect, Mr Chair.

The Chair: Is that a question, Mr Marchese?

Mr Marchese: Yes. I'd like to hear whether that's his whole concern: "should."

Mr Tilson: If you look at 1(c) and 1(e), I believe that solves your concerns with this amendment. I was specific about the wording in (a)(ii), but the overall amendment you're presenting, in my view—I don't want to step on Mrs Johns's shoes, but it just seems to me that your amendment is more restrictive. One of the complaints from the care provider community was that the previous legislation was too confusing, was too restrictive.

Mr Marchese: Mr Tilson, I thought you were clarifying my point around the word "should," and now you're making a different argument. You can speak afterwards. I didn't want to lose my place on the list.

Mr Tilson: I don't want you to lose your train of thought.

Mr Marchese: Thank you. I thought you were going to clarify my point, but you added (e) as an argument. It says "to ensure a significant role for supportive family members," but (ii) speaks about "family members or, if there are no family members, friends and advocates." Our

(ii) is quite different from your 1(e), which only speaks to ensuring a significant role for supportive family members. Our (ii) speaks about where there are no family members, to give standing to friends and advocates. I really thought your concern was around "should," and I wondered whether the civil servants had concerns around that. I know through Ms Johns they talked about whether that confuses its relationship to ranking.

Mrs Johns: That's part of the issue too. I don't disagree with this personally.

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Mr Marchese: Could I just get a civil servant for an opinion? I want an opinion from them with respect to whether it affects ranking. Is that why you think (ii) is a problem?

Ms Halyna Perun: The issue around highlighting family members, friends and advocates, friends particularly—when you look at the ranking, a friend can get involved under the Health Care Consent Act where that friend is appointed as a board-appointed representative or becomes a guardian or is an attorney under a power of attorney for personal care, or that friend is a partner. That is the way a friend would become involved in the Health Care Consent Act.

Mrs Boyd: Mr Chair—

The Chair: Excuse me. First, could you identify yourself for Hansard.

Ms Perun: I'm sorry. Halyna Perun.

The Chair: Now we have a question. Are you yielding the floor, Mr Marchese?

Mr Marchese: Absolument.

The Chair: Is this temporary or permanent?

Mr Marchese: Completely. Mrs Boyd will—

Mrs Boyd: First of all, the ranking has nothing to do with this particular thing. This is an amendment under clause 1(a) and it would become clause 1(a.1). This is not a question of substitute decision-making. That's where the ranking applies.

What this is designed to do, what particularly (ii) is designed to do, is to ensure it's given if someone needs some support from family if they're available, and if they're not available from friends or advocates, in order to make their own decision. That was the issue.

I would just remind you that Mr and Mrs Clemens presented it to us as a recommendation, but it is in fact the recommendation of the inquest jury. It was based on a circumstance where the people who were available and able to assist Lonnie Clemens in making a decision were not given any kind of standing, were not able to do that. The purpose of this is to ensure that there will be support to people to make their own decisions where they are being told they are capable to do so.

I agree with Mr Tilson that the language here, "should be available"—I can just see a medical professional saying, "Aha, there's no family, friends, advocate available; therefore, we won't support this person in making his own decision." That's how silly this gets. What this is saying is that they should be able to be present. They were not given any kind of standing or any ability to help him with his decision-making, and there was a lot of testimony around this at that inquest.

I would just suggest to you that this in no way has to do with substitute decision-making. This is strictly around the person when they're able to make their own decision and being able to have support to make their own decision.

Mrs Caplan: I'm not going to belabour the point. I would point out to the government the actual wording from the inquest. You said you were going to pay attention to the findings of that inquest, not as it related to the specific case but as it might relate to this legislation, and that you were willing to make changes that would implement the findings of this inquest which had direct bearing on Bill 19.

They said this, recommendation 6: "It is recommended that in drafting new legislation, there should be a genuine attempt to use plain language." That's one point. Anybody reading this may see it as an improvement over some previous legislation, but frankly, it's still very confusing language, and if there is an opportunity to make it clearer and plainer, we should do that.

However, the most important one as it relates to the amendment before us is recommendation 22 of the inquest. They say:

"It is recommended that any changes to health care consent legislation retain the following principles:

"The respect for the right of an individual to make their own decisions to the greatest extent possible.

"The support from family, or where there is no family, friends and advocates, should be available to assist people in making their own decisions without having to give up their right to make decisions.

"The supportive family and friends should be the primary substitute decision-makers where this is necessary."

This is the recommendation of the inquest jury. What I've said to you is that I don't want to see anything put into the legislation that would confuse matters, and I don't believe this would interfere with your hierarchy which would later clarify this principle. If this is put into the legislation in a way that is principle only, it would do two things: It would give plain language to the words "autonomy of the individual," and it would clarify your desire to see the supremacy of family and friends and volunteers, to use your language.

If you could find a way that would accommodate the recommendations of this inquest and give you some principles and clear language, I think you would be doing what you said you would do when you said you would respond to the findings of this inquest. It's that simple. Nobody wants to see anything confused, nobody wants to see it complicated. But it is reasonable to find a way, and if these are not the words, let us know where you're prepared to clarify the language and put in place those principles as recommended by this inquest.

Mrs Johns: I want to read to you what the Ministry of Health said to both recommendations 6 and 22 of the inquest which you just quoted. Recommendation 6 said that in drafting, "there should be a genuine attempt to use plain language." We talked about that the other day: How plain can plain language be when we're doing legislation? We heard from a number of people along the line who said ours is substantially better than in the past, and the

ministry has said the HCCA has less complex language, structure and process than the Consent to Treatment Act.

With respect to recommendation 22—this is a draft, by the way. We're talking about the fact that any changes to the health care consent legislation retain the three principles you outlined, and the ministry suggested that these principles are set out in front of the purpose section, section 1 of the HCCA, which we have been talking about on page 63.

It says: "In addition, subsection 18(1) lists the possible substitute decision-makers. Clearly, if a person has not provided in advance for someone else to be his or her SDM, ie, in a power of attorney for personal care, family members will be the primary substitute decision-maker. The PGT is substitute decision-maker of last resort only."

Mrs Caplan: I really appreciate the clarification. It would be nice, however, if the minister and the parliamentary assistant would be open to hearing recommendations of juries that come from coroners' inquests and not just go to the defence—of course the ministry officials are going to defend their legislation.

The Chair: Excuse me, Mrs Caplan. You don't have the floor. I don't think that's fair.

Mrs Caplan: I thought I did.

The Chair: No. At no time did you have the floor.

Mrs Caplan: I'm aggravated now.

The Chair: Mrs Johns has it, and we'll go now to Mrs Boyd. I'm sorry I aggravate you.

Mrs Boyd: I'm not aggravated. I just think this is a really difficult issue. It seems to be hard to get across. We're not talking about substitute decision-making here. We're talking about some provision in the principles that would allow family, friends or advocates, whoever's available to help an individual who can make their decision themselves, to be there to do that.

Let me be very clear. One of the issues raised in this particular inquest was the sense that somehow the health care professionals seemed to see the parents and the Reena Foundation as trying to influence in an inappropriate way the decision-making of this person who'd been deemed to be capable, or at least presumed to be capable pending any further action.

The issue here is that if you're very clear that individuals ought to have as much right as possible, some individuals, particularly developmentally delayed individuals, need some support to be able to exercise that decision-making. The issue here is that you're making the assumption that of course any health care professional would allow that to happen. But the problem is that health care professionals have reason to be concerned about whether undue influence is being exercised. At least it's the only explanation we could come up with for why they wouldn't have allowed some intervention on the part of supportive family and friends. It's a real conundrum.

1650

This is before you get to clause (c). Certainly it has nothing to do with (e), which is where substitute decisions are. It has nothing to do with (e) because we're not talking about that. Your (e) is fine, and in (c) where you're talking about allowing people to appeal to a tribunal, they've already been found incapable. We're not

talking about people who've been found incapable; we're talking about people who are capable. Are they entitled to have support from family, friends and advocates in making their own decision?

That is our issue. You've jumped to incapacity. We're talking about capacity. We're talking about, Where they're thought to be capable, do they have the right to have the support of family and friends to help them make that decisions? We might think, just off the top of our heads, that that is a foregone conclusion. The reality is that the inquest jury wouldn't have made that recommendation if they thought it were.

Mr Marchese: Mr Chair?

The Chair: No, Mrs Caplan is next, Mr Marchese.

Mrs Caplan: I will be very brief. It's not helpful to just read into the record the defence of what the ministry has written, because that's not the point being made. The point being made is that you're not dealing with those who are incompetent or who have been found to be unable to make decisions for themselves. That was the finding of this jury, whether it's an older person or a developmentally delayed person or someone who has some kind of challenge or handicap which will make it more difficult for them to make a decision.

Where they're found capable, this is a signal that says the legislation is about supporting capable people. This is before you get into the hierarchy. It's a principle of the legislation that supports the individual who is capable or who varies in and out of incapacity, during the times when they're capable, to have the support of those around them to make a decision.

Part of the problem in the Clemens inquest was that, for whatever reason—and that I think ultimately will be challenged in the courts—the doctors determined he was capable. Even though he had a history of incapacity, they determined he was capable, and the family and the friends and so forth were not encouraged to help with another decision. Unfortunately, it wasn't until it was too late that he was found to be incapable and then the treatment was rendered, even though the parent, the advocates and everyone said, "He's not thinking clearly, even though you may find him capable."

This is the notion of assistance to a capable person before a finding of incapacity. That's the purpose of this. I explained at the outset how difficult that is, because by law it's black and white. If you're capable, you're on your own; you don't need any help or assistance and you can make your own decisions. I see Halyna shaking her head that I'm right. I understand that difficulty.

But this is a signal that says even people who may be deemed capable may need some support. I'm not sure it's exactly the right wording, but the intent of this is that while you ultimately have to listen to the capable person, there should be some assistance permitted and encouraged to support a person who is not deemed incapable. It's to encourage that. As I say, I don't know if this does it, but I think it's a good principle to have in the legislation that encourages that kind of communication and greater understanding when you have someone who, while they are capable, may have some handicap that interferes with their clarity, is the word I'm going to use. That's the last I have to say.

Mrs Johns: Can I make a point of clarification?

The Chair: No, let's go on to Mr Marchese. The questions and points of clarification end up being debates. We've got to use them properly, otherwise we're really hurting the people on the list who wish to speak to the matter.

Mr Marchese: Quite clearly, the arguments have been made. There's nothing much to add. I just want to say a few things.

First, these recommendations come from an inquest that we all agree was a serious one, and we are trying to find language that deals with things like that. We're trying to be helpful. We're not trying to argue here on political positioning at all. I'm not quite sure whether the government members want some time to reflect on this. If they do, we'd be very happy to stand this matter down so you can reflect on what has been said. If you think that's useful, we don't mind working with you to find language that might accommodate your concerns and accommodate the concerns we've been trying to speak to. Is it helpful for us to stand this matter down until tomorrow rather than voting on it, Mrs Johns, Mr Tilson?

Mrs Johns: I believe there may be an alternative, but this is not it and I am not going to vote for this at any time. I'll tell you why, if we can go through that process, and then we can decide. But you finish first and then we'll go.

Mr Marchese: No, I've finished. I was just trying to be helpful.

Mrs Johns: In your (i) one you're talking about a capable person. With a capable person, we should respect their wishes—not "to the greatest extent possible." We should respect their wishes, period.

In (ii) we're talking about a person who is still capable, I believe from what you've said, on the small part, which is section 14 and section 15 of the act. Basically what we have here is a person who is capable or is incapable. I mean, there's no grey area there. The person is capable, so he makes the decision he's capable of, or he's incapable and then he gets a substitute decision-maker. So I also have a lot of problem with the second one as a result.

In (iii) the person is incapable, I think, because he's getting a substitute decision-maker. So the substitute decision-maker makes the decision for the person. I believe if the person is capable, we have dealt with that in (c). If the person is incapable, we have dealt with it in (c)(ii). And the person who's in the middle there is either capable or he's incapable.

I have lots of problems with this. To stand this down will not help me. So from my standpoint, I don't need to stand this down.

Mr Klees: I can't disagree with the intent we have here. What we don't want to do is conflict with other parts of this bill, and I hear what my colleague is saying in terms of having all of these bases covered off. My suggestion would be perhaps that we do stand this down and do have an opportunity to talk about this and bring it back tomorrow, only from the standpoint that I think it's important that this government is seen to be putting that principle front and centre.

If our colleagues opposite, after all this time of spending a great deal of time on this subject, are unclear that

this principle is clearly set out in the legislation we're dealing with, if the legislators here are unclear, perhaps we need some rewording to make it clear. If we have to spend hours explaining to each other that we want to honour the rights of people in decision-making and we're not clear about it here, there's something missing. That would be my suggestion.

Mr Marchese: Mr Chair, I move that we stand this matter down.

The Chair: You have to have unanimous consent for that, because we're dealing with it in order. We've been through this. Do we have unanimous consent to have this amendment—no, we do not have unanimous consent.

We'll now go to Mrs Caplan for a motion.

Mrs Caplan: I'd like to move adjournment.

The Chair: I assume you're moving to adjourn this hearing till 10 o'clock tomorrow morning in room 151.

Mrs Caplan: Yes.

The Chair: Is there anyone opposed to that motion at this time? We have opposition. All those in favour of the motion to adjourn? All those opposed? The motion is defeated. We shall proceed.

Mr Marchese: I want a recorded vote on this motion, Mr Chair.

The Chair: Since there are no further persons on my list to debate the amendment proposed, shall the amendment carry?

Ayes

Boyd, Michael Brown, Caplan, Marchese, Ramsay.

Nays

DeFaria, Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: The amendment is lost.

Mrs Caplan: Mr Chairman, I'd like to move at this time that the committee adjourn until 10 o'clock tomorrow morning.

The Chair: You've already moved the same motion. I don't know how we can get another—

Mr Michael Brown: There was an intermediate piece of business.

The Chair: That's true.

Mr Marchese: There was already agreement on the time.

The Chair: No, there's no agreement. Can we reach an agreement? The motion Mrs Caplan made is that we adjourn at this time. If that is not suitable, can we reach an agreement about when we will be adjourning? Perhaps you can help me.

Mr Tilson: We've only passed three sections all day, and you want to adjourn at 5 o'clock?

The Chair: Is there a quota?

Do you wish a formal vote on the motion, Mrs Caplan?

Mrs Caplan: Yes, I do.

The Chair: We have a motion to adjourn until 10 o'clock in the morning. All those in favour? Carried. We're adjourned.

The committee adjourned at 1703.

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Chair / Président: Martiniuk, Gerry (Cambridge PC)

Vice-Chair / Vice-Président: Johnson, Ron (Brantford PC)

*Boyd, Marion (London Centre / -Centre ND)

Chiarelli, Robert (Ottawa West / -Ouest L)

Conway, Sean G. (Renfrew North / -Nord L)

*Doyle, Ed (Wentworth East / -Est PC)

*Guzzo, Garry J. (Ottawa-Rideau PC)

Hampton, Howard (Rainy River ND)

Hudak, Tim (Niagara South / -Sud PC)

*Johnson, Ron (Brantford PC)

*Klees, Frank (York-Mackenzie PC)

*Leadston, Gary L. (Kitchener-Wilmot PC)

*Martiniuk, Gerry (Cambridge PC)

*Parker, John L. (York East / -Est PC)

*Ramsay, David (Timiskaming L)

*Tilson, David (Dufferin-Peel PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Brown, Michael A. (Algoma-Manitoulin L) for Mr Chiarelli

Caplan, Elinor (Orléans L) for Mr Conway

DeFaria, Carl (Mississauga East / -Est PC) for Mr Ron Johnson (afternoon)

Johns, Helen (Huron PC) for Mr Hudak

Marchese, Rosario (Fort York ND) for Mr Hampton

Also taking part / Autres participants et participantes:

Ministry of Health

Perun, Halyna, legal counsel

Clerk / Greffière: Bryce, Donna

Staff / Personnel:

Beecroft, Doug, legislative counsel

Gottheil, Joanne, legislative counsel

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Official Report of Debates (Hansard)

Tuesday 27 February 1996

Journal des débats (Hansard)

Mardi 27 février 1996

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Advocacy, Consent
and Substitute Decisions
Statute Law Amendment Act, 1995

Loi de 1995 modifiant des lois
en ce qui concerne l'intervention,
le consentement et la prise
de décisions au nom d'autrui

Chair: Gerry Martiniuk
Clerk: Donna Bryce

Président : Gerry Martiniuk
Greffière : Donna Bryce

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Tuesday 27 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mardi 27 février 1996

*The committee met at 1005 in room 151.*ADVOCACY, CONSENT
AND SUBSTITUTE DECISIONS
STATUTE LAW AMENDMENT ACT, 1995
LOI DE 1995 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'INTERVENTION,
LE CONSENTEMENT ET LA PRISE
DE DÉCISIONS AU NOM D'AUTRUI

Consideration of Bill 19, An Act to repeal the Advocacy Act, 1992, revise the Consent to Treatment Act, 1992, amend the Substitute Decisions Act, 1992 and amend other Acts in respect of related matters / Projet de loi 19, Loi abrogeant la Loi de 1992 sur l'intervention, révisant la Loi de 1992 sur le consentement au traitement, modifiant la Loi de 1992 sur la prise de décisions au nom d'autrui et modifiant d'autres lois en ce qui concerne des questions connexes.

The Chair (Mr Gerry Martiniuk): I call the continuation of these hearings to order. These are the hearings of the standing committee on administration of justice considering Bill 19.

I should announce that I have requested a subcommittee meeting at 12 o'clock for approximately 10 minutes so we can discuss certain matters expediting our consideration of parts of the bill.

We shall proceed this morning with clause 1(b), which has an amendment proposed by Helen Johns.

Mrs Helen Johns (Huron): By the government, I hope.

I move that clause 1(b) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "in care facilities" in the third line.

Just as some discussion on this, on part IV we heard from a number of people who would have liked to see us extend outside of the three care facilities that we have talked about specifically in the act, so we have taken out of this section "in care facilities" to be able to accommodate them.

The Chair: Any comments or questions in regard to Mrs Johns's motion?

Mrs Marion Boyd (London Centre): I just have a question as to whether or not, and I can't remember, there are other amendments that do the same thing throughout.

Mrs Johns: A number of them.

Mrs Boyd: Then I would like to propose that whatever the decision is—and certainly we have no objection to this; we think this is a good change and certainly accords with what we heard—that wherever this particular

wording change occurs, henceforth we simply agree to it and we don't debate it again.

Mrs Johns: Fine with me.

The Chair: Excellent suggestion, Mrs Boyd. Mrs Johns, can you withdraw your motion and try to move a motion which would contain all the changes of that type throughout the act? Is that possible?

Mr Rosario Marchese (Fort York): Leg counsel.

Mrs Johns: We tried to deal with this with leg counsel before, so could I let leg counsel speak for a few minutes and see what the problem was with that?

The Chair: Certainly.

Ms Joanne Gottheil: There are different changes in wording that are required in different provisions of the bill, so it's not possible to do one global motion that just strikes out certain words and replaces them. But I'm sure we can point out the sections where that happens.

The Chair: Fine. We shall proceed with 1(b). Shall clause 1(b) pass? Agreed.

Mrs Elinor Caplan (Orléans): The only thing I would ask, Mr Chairman, is if you could state the page number. Since we're going to go fairly quickly through this, that would be helpful.

Mrs Johns: Page 76 in the motions, and the first time we see it is in 1(b) on page 63 of the Health Care Consent Act.

Mrs Caplan: That's very helpful. Also it helps for people who are watching to be able to follow along and know where we are. We're on page 63 of the act—

Mrs Johns: Yes, in the bill.

Mrs Caplan: That's page 62 of Bill 19, not 63. That's if you're at (b).

Mrs Johns: It's the last line on 62.

Mrs Caplan: And page 76—

Mrs Johns: In the motions.

Mrs Caplan: That's right. Good.

The Chair: We will now proceed to clause 1(c), which is set out on page 77 of your proposed motions.

Mrs Caplan: Have we concluded page 76? Did we vote? I didn't hear a vote.

The Chair: Yes.

Mr Marchese: It was agreed.

Mrs Caplan: Okay, thank you. Now we are on page 77?

Mrs Johns: I'm on page 77 right now and it's in the Health Care Consent Act, Bill 19, page 63. We're dealing with clause 1(c).

I move that clause 1(c) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "who reside in care facilities" in the fourth and fifth lines and substituting "who are to receive personal assistance services."

This is a consequential amendment to the one we were talking about last time, and I won't talk about it again from now on, except to say that we felt that some people wouldn't be residing, they would just be receiving care, and we wanted to make sure that we didn't just make it an overnight stay.

Mrs Boyd: I think it's important for us to just point out that this is really important for the growth in community-based long-term care. That was the concern and, again, there are many, many different consequent ones where we'll be changing to "personal assistance services." Again, it's very responsive to what we heard, so that's great.

The Chair: Is there any other comment in regard to clause 1(c) in the proposed amendment?

Shall the amendment carry? Carried. Any opposed? That amendment has passed.

We'll proceed to subclause 1(c)(i) on page 78.

Mrs Johns: I'm on page 78 of the motions and page 63 of the bill.

I move that subclause 1(c)(i) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"(i) allowing those who have been found to be incapable to apply to a tribunal for a review of the finding."

This replaces the reference of "appeal" in the incapacity finding to "review of the finding." It was suggested by the PPAO, and we believe it's more accurate and precise wording. We treated this as a technical amendment and we felt it should be changed.

Mrs Caplan: In fact this reverts to what it has been the existing practice and language. The notion of changing it to "appeal" made it far more judicial. This is a quasi-judicial body and I'm pleased to see this amendment. I think it does actually reflect the way things work.

The Chair: Any other comment? Shall subclause 1(c)(i) pass? Any objection? If not, we shall proceed to 1(c)(ii) as contained on page 79.

Mr David Ramsay (Timiskaming): You're doing a very good job, Mr Chair.

The Chair: No, the committee is doing a good job.

Mrs Johns: We're once again on page 63 of the bill, page 79 in the motions.

I move that subclause 1(c)(ii) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "a personal assistance plan" in the seventh and eighth lines and substituting "personal assistance services."

We discussed this when we talked about the purposes and it was also outlined by the ONHA—

Mrs Caplan: Agreed.

Mrs Johns: They're just agreeing with it. I don't think I need to read any more.

Mr Marchese: Discussion is useful, Mr Chair. I think the explanation that Ms Johns provides for motions is important, again particularly for people watching these proceedings. It's good to have a rationale for amendments, so I would encourage it.

The Chair: Are there any other comments or questions in regard to subclause 1(c)(ii)?

Mrs Johns: Can I just add into the record then what the ONHA said? Taking from valuable experience in the past, I'll add this:

"By focusing on the capacity for the plan instead of the actual activity, the rights of many residents to make their own decisions about their daily aspects of care could be removed. Nursing home staff have worked hard to help residents maintain as much control over their lives as possible. This includes supporting them to make their own decisions about activities of daily living. We wish to continue this practice.

"With the current draft legislation the substitute decision-maker would consent to the plan and the staff would implement the plan without considering the residents' desires at the time because the activities as listed in the plan have already received consent from the substitute. The act implies that the substitute decision-maker can override an incapable resident's refusal. To best facilitate resident independence the act should focus on specific personal service activities and not on the plan."

We will have a number of amendments with respect to this, and I won't discuss that again but that's why we're doing it today.

The Chair: Shall the amendment to subclause 1(c)(ii) pass? Carried.

We'll move on to 1(c)(iii) as set out on page 80 of the proposed motions. That is a motion to be brought by the third party.

Mrs Boyd: I move that subclause 1(c)(iii) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "and after attaining 16 years of age" in the last two lines.

The rationale for this, we heard a very fine presentation from Mr John Burns, who was talking about the fact that, although we had all agreed and all parties had indicated their agreement with the issue being capacity not age and have taken that out in the Substitute Decisions Act, and it will be taken out later in the act in terms of dropping sections, that that was then taken away by the constant wording throughout the bill about people being capable and wishes being expressed after the age of 16.

Since the issue here is capacity, and I think we're all agreed that the issue is capacity, where we come up against this, and you'll notice that we have a number of amendments, that could simply be deleted, because the issue is capacity.

I quote Mr Burns. He said, "The legislation thereby is biased towards an arbitrary age of consent at 16 years yet capacity not age determines whether a person is capable with respect to consent."

He said later on in his presentation, "Capacity cannot be determined solely on the person's age nor can a mature minor be denied the right to request an alternative medical treatment instead of what the health practitioner wants him or her to have."

I would hope if we discuss at some length this issue and if we come to an agreement, whatever that agreement is, it would then apply throughout the two acts that we're actually—well, all the consequent ones if there are some in the various facility acts, so we can just discuss it once and can make that decision.

Mrs Johns: As everyone around this table knows, this is a fairly controversial issue, and there's a court challenge in the works at this time. We, as the Progressive Conservative caucus, have been together and talked about

this and we believe that we should wait and let the court decision affect the legislation. From our standpoint, we haven't changed what was in the bill when the NDP produced the bill, and we believe that we'll let the courts resolve this issue, so we're going to be opposed to this today.

The Chair: Any other comment or discussion?

Mrs Caplan: The only point that I would make and we have discussed it at committee, I believe that the only place where the age of 16 in Bill 19 is appropriate is for the purpose of making a power of attorney. Other than that, I think silence is best and will lessen the confusion between the Child and Family Services Act and this legislation.

As I understand it, what it means is that under the legislation today a child or an individual who is deemed capable at 15 to make a decision regarding their own care, when they turn 16 and are deemed incapable, the wishes expressed at age 15 are not to be considered. If that's a correct interpretation, I don't see how you can defend that. If they're capable at 15 and they've expressed a wish, why it should not be respected at the age of 16 doesn't make any sense to me. However, if you want to wait for a court case—would you just tell me if my understanding of what this means is accurate?

Mrs Johns: What legal counsel is saying here is that their wishes will always be considered under 19(2)(a), but they're not binding.

Mrs Caplan: That's what they mean. Whereas if you remove this, they are binding because they were clearly expressed at age 15 and those wishes would be binding. What this says is those wishes are not binding, and I think that's an anomaly in the legislation that doesn't make any sense. Especially since you're prepared to accept those directions at age 15, why you wouldn't respect those upon a one-day birthdate change I always felt was an anomaly in the legislation, and I don't understand why it is controversial, frankly, since we have agreed that the act should remain silent, and you're dealing with someone who's deemed incapable at the age of 16.

However, I'm not going to prolong the debate and the discussion if the government's not going to support it. They've got the majority. I just don't think they've got any rational explanation for why they wouldn't just leave it silent. However, you're the government.

1020

Mr Marchese: Just a comment on this issue: I understand it's controversial and I also understand that from your point of view there's a court challenge and you want to wait for the results of that. I just want to add for the record that I found Mr Burns's opinion on this, as a legal counsel on these issues, very compelling and very persuasive where he argues that the important principle is capacity, not age. I thought that was a very strong, compelling, persuasive argument. On that basis, I was quite prepared to support it. That's why I would support this amendment. I realize we're not going to convince you on that matter, but I thought the point should be made.

Mrs Boyd: One of the problems with the rationale Mrs Johns has provided for us is that of course if you go ahead with this act as it's written, it will be used in the court on the side of 16 as the age, so what you are doing

is skewing a court finding by allowing this to be in the act. You are not standing up for the principle you say you have stated. In fact, what you are doing is giving more ammunition to those who want to restrict the ability to give consent to health care to an age factor as opposed to a capacity factor.

That's a very serious thing to do. It seems to me that the government doesn't have the courage of its convictions on this matter if you are willing to waffle around in this way and allow the various little provisions within the act to take away the issue of capacity. I have all the sympathy in the world with the difficulty you have in caucus and the difficulty you have in some communities around this, because we faced it too.

It is controversial. I'm surprised Mrs Caplan says it's not controversial; it is controversial.

Mrs Caplan: —agree about silence in the act and everything else.

Mrs Boyd: Exactly, and that is the point. I think you fuel the controversy by having it there at all, and you would be much better to just be silent and the court case will go ahead. If the court finds differently, then the whole act will be interpreted differently in any case, and the rationale you provide just really doesn't hold much water, quite frankly.

The Chair: Is there any other comment?

Mrs Caplan: Just to clarify and make sure that Hansard picks it up, the point I was making was once you've agreed that the act should remain silent on the issue of age, it's inconsistent to have this in place, and that's why I don't think it should be controversial, because you've already made the tough decision by remaining silent on the age every place else. I see you nodding your head. Obviously, you've got an internal problem in your caucus, is the reason for this.

Mr Ramsay: Helen's on side, I think.

Mrs Caplan: But I don't think this is a controversial part of it, and in fact—

Mr Ramsay: The dinosaurs are the problem.

Mrs Caplan: —I think it says that perhaps people don't understand the implications of this, which is just a little bit of confusion.

Mrs Johns: If we look at, for example, section 19 where we talk for the first time, I think, about being 16 years old, one of the things that would be very difficult and one of the reasons the caucus is hesitant about this is it's very difficult to assess what anybody's capability was in the past, but especially someone who is under 16, for example. So at that point we're saying, what were their wishes in the past, and we should move forward with those. People change, as we all know, from the time when we're young through to 16; at some point in there we become capable of making decisions, and it changes with every person who comes along. My four-year-old is capable of making decisions about some things and not about others, and it ranges through the process all the way past 16. We would all probably agree to that.

What's important here is that when we have to look back and say, "Was this person capable when they were 12 or 13 or 14?" we feel that adds an extra issue that is difficult to assess. That's part of our rationale for it. It just makes the issue more complex. Other members of

our caucus could talk about traditional family values, people wanting to be involved in their children's decisions, which doesn't deal necessarily with capacity, but they feel that in some cases they'd like to be involved in their family's decision-making also if they are incapable of making the decision themselves.

Mrs Caplan: I think, actually, that you've made the case for the exact opposite of what you've attempted to do because the legislation today, as it stands, says that the evaluator, the professional, the doctor will be able to make the determination of capability for anyone. We had Sick Children's Hospital tell us that they have young people who come to them with sexually transmitted diseases who are afraid to tell their parents, who are afraid to go to their own family doctor, and this legislation will permit those children to be treated, provided the doctor says they're capable. If they say something to that doctor when they are 15 and 364 days about their wishes and two days later, after their 16th birthday they have a car accident and that doctor says, "This person told me two days ago," those wishes do not have to be respected. That's the effect of this law.

It doesn't say families are going to be involved in decisions with their children when they're under age 16, so to give that impression, I think, is wrong, Mrs Johns. You've made the tough decision, which is the right one, in my view and in our caucus's view. Let the act remain silent and let the health practitioner determine whether or not the young person is able to make that decision and whether or not it is appropriate at that point in time.

You have also said in this legislation, further on under the substitute decisions legislation, that at the age of 16 an individual can write a power of attorney. But what this does is say that if a person, boy or girl, has a car accident the day after their 16th birthday, something they said the day before doesn't have to be binding, when their wishes were clear. That's an anomaly that I don't think is supportable in light of the other aspects of the bill.

If this was a tradeoff within your caucus to say, "We'll let you have authority over those who are incapable because they're unconscious after the age of 16," or deemed incapable because of some other reason the day after they turn 16, and you think you got some satisfaction to the people in your caucus who believe parents should be able to have total control over all their children's decisions up to the age of 16, they don't have control, not when the child is deemed capable by a physician; only when they're deemed incapable. It just seems to me that you have an anomaly and that you're inconsistent in trying to defend this. I think you'd be better off to not try and defend it and just say, "We're leaving it to the courts."

1030

Mr John L. Parker (York East): I didn't intend to participate in this discussion, but I think some points have been raised that require that I address them. There's been some speculation as to the motive behind the government's position on this point and I will give you my position on this point. I submit that this reflects the government's position as well, but I won't presume that; I'll just give you my point of view. It's been suggested that depending on the riding we represent or the area we

represent or the constituency we represent, our attitude is likely to be different. With that in mind, I'll just declare that I represent the riding of York East, which is an urban Toronto riding, for what that's worth.

I support the original wording in this bill and I do not support the proposed amendment. I see no inconsistency in the government's position on this issue throughout the bill. I think we are dealing here with more than strictly the issue of capacity. We have to consider also the issue of maturity of judgement. A 16-year-old or a 15-year-old or a 14-year-old or a person of any age may be capable of having matters explained to them in terms that they can understand and arrive at a reasonable judgement as to the merits of the alternatives being presented, and be capable of consenting to a particular course of action, and may have the capacity to give instructions when properly advised.

With that in mind, we have deleted any reference or we have omitted any reference to age when it comes to matters of capacity. We've said you take each case as you find it, and if you're dealing with a person with capacity, then you take instructions from that person. If you are dealing with a person who does not have capacity, then you look somewhere else for instructions. But you don't look at the age as a factor, you look at the individual. That has to do with on-the-spot instructions, the capacity to give instructions at that time. In this provision, however, we are not talking about that. In this provision we are talking about dealing with a person who at the moment is not able to give instructions, for whatever reason, and we are looking for reference points to guide us as to how to make a decision on that person's behalf.

We have provided in this bill that the prior expressed wishes of someone, the wishes expressed at any time in their life, will be considered, but they will not be binding if they were made prior to the age of 16. What's the reason for that? The reason is different people have different points of view on different subjects at all different times, and over the course of one's lifetime, as one's experience in life increases—

Laughter.

Mr Parker: I hear some laughing on the other side. I suppose they're referring to the Liberal Party, which seems to have different points of view at any day of the week or any time of the day.

But attitudes change, opinions change and one's judgement changes over time, particularly as one's experience with life increases. In the early stages of one's life, one is very susceptible to constant changes of points of view, depending on influences that happen to be brought to bear at any one particular stage along the way. Later on in life, as people have seen more, experienced more, learned more, they tend to be more mature in their judgements, they tend to be more consistent in their judgements and they tend to be more informed in their judgements. This is a matter that progresses over time.

At what point should someone's prior expressed wish be binding? We don't think it's wrong to draw a line. We don't think it's wrong to say: "Before a certain line, we probably shouldn't be bound by a prior expressed wish. Later on, we probably should be. We should probably

take the chance that by that stage of the game they've got the maturity of judgement where their wish should be binding."

We happen to have drawn the line at age 16. We can argue about whether it should be 14, whether it should be 18. We've heard submissions on all those points. But I don't think it's wrong to face that issue and to draw the line somewhere. Age 16 is an age that has emerged, in our experience, as an age that makes sense and that's why it's provided for in here.

It has nothing to do with capacity to make a decision or capacity to give an instruction. It has to do with maturity of judgement and experience in life and the confidence that the person expressing the wish has achieved that degree of maturity in their judgement and that degree of experience where the wish they have expressed can be relied upon as realistically reflecting their real view of the matter after some degree of reflection.

The Chair: I take this opportunity to introduce, on behalf of the committee, two members who are attending with us today: the honourable member for Sarnia, David Boushy, and the honourable member for Durham East, John O'Toole.

Are there any other comments or questions before we put this matter to the vote? If not, shall this amendment pass?

Mr Marchese: A recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Marchese, Ramsay.

Nays

Boushy, Doyle, Guzzo, Johns, Leadston, O'Toole, Parker, Tilson.

The Chair: The motion is defeated.

We shall proceed now to clause 1(e), which is on page 81 of your proposed amendments.

Mrs Johns: Page 63 of the bill, page 81 of the motions, clause 1(e).

I move that clause 1(e) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "plan" in the fifth line and substituting "service."

We've had this discussion before.

The Chair: Shall the amendment pass? Carried.

Clause 1(f) on page 82.

Mrs Johns: Page 63 of the bill, page 82 of the amendments.

I move that clause 1(f) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "a personal assistance plan" in the fifth and sixth lines and substituting "personal assistance services."

The Chair: Shall the amendment pass? Any objections? Carried.

Shall section 1 of schedule A pass as amended? All those in favour? Opposed, if any? Carried.

We shall now proceed to section 2 of schedule A, and in particular subsection 2(1), on page 83 of the proposed amendments.

Mrs Caplan: I move that the definition of "evaluator" in subsection 2(1) of schedule A to the bill be amended by inserting after "subsection" in the fifth line "a social worker with the credentials prescribed by the regulations."

The intention here is to make it clear that social workers will be able to be evaluators. Because social workers do not have their own college at the present time, and while we have no timetable from the government, the intention here is to allow the credentialling to be specified by regulation, but to have the act be specific to give comfort to those who are presently able to do this function and, as we heard from many presenters, often called upon to do this function; that there will be no intention that this will be left wholly to regulation to name those in the profession of social work to be included in this legislation. Unfortunately, social workers are frequently left out of health legislation because they are not part of the regulated health professions. We felt it was important that they be actually named in the statute as opposed to left entirely to regulation.

Mrs Johns: We certainly agree with the premise that both the Liberals and the NDP have put forward in their motion that social workers will be evaluators. We have proposed that we would do it differently. I have the draft regulation here that we would present, which says the way we would like to go with it. I would like to pass it out for people to have a look at, if that would be possible. I'll read it as we're going along so it's on the TV:

"1(1) For the purpose of the definition of 'evaluator' in subsection 2(1) of the act,

"(a) persons described in clause (a), (l), (m), (o), (p) or (q) of the definition of 'health practitioner' in subsection 2(1) of the act may act as evaluators for the purpose of determining whether a person is capable with respect to his or her admission to a care facility and for the purpose of determining whether a person is capable with respect to a personal assistance service;

"(b) social workers are evaluators who may act as such for the purpose of determining whether a person is capable with respect to his or her admission to a care facility and for the purpose of determining whether a person is capable with respect to a personal assistance service.

"(2) In this section,

"social worker" means a member of the Ontario College of Certified Social Workers.

"2. This regulation comes into force on the day subsection 2(1) of the Advocacy, Consent and Substitute Decisions Statute Law Amendment Act, 1996 comes into force."

1040

Mrs Boyd: We would certainly agree that social workers need to be covered in some way. You had me until you came to your section 2 in your regulations, because your section 2 is a de facto acceptance of the Ontario College of Certified Social Workers as the only body representing social workers. Their requirements are that somebody have an MSW and be certified by their particular college. Many of the people who make these assessments are people who have BSWs or have college diplomas in social services. I think you will find that if

you look at who is actually doing that. What this means is that only people who meet the requirements, which are very high and frankly a gatekeeping requirement on the part of the college of social workers, would be able to make this decision. I'm not sure that you really want that.

It is true that most large hospitals will only hire people who have an MSW and who are certified. But your thinking—because it's services and facilities of many situations, in which the person would not necessarily have those requirements and where the college of social workers has no legislation covering it in this province, and largely because of this problem—would cut out and would make it difficult for many, many social service agencies which in fact have people who are considered qualified by virtue of their particular qualifications who don't meet the certification requirements of the college. That's an argument for another day, whether or not those requirements ought to be accepted.

This is such a thorny problem that in all the discussions that went on for 10 years around the registered health care professions, no party, in fact no government, was able to come up with a way of dealing with this issue, because large numbers of people who would not be accepted by the college in fact work for government agencies. It really creates difficulty, and that was certainly the problem that we faced, it's certainly the problem that the Liberals faced as we went through it, and frankly they would have been certified long ago if the Conservatives had faced the same issue when they were in power.

So I think, although I understand what you're trying to do by your regulation, what you are going to do is, again, cut out a whole group of people who often do those evaluations, and I don't think you want to do that. We need to know that for people who are members of the Ontario College of Certified Social Workers—although I'm not sure that's what they call it. I think they just call it the college of professional social workers. I think you've even got the name wrong. I think it is the college of professional social workers, but I'm not certain about that. They do certify social workers, but I think they call themselves the college of professional social workers.

I think we need to be very clear that from their perspective they believe that with the ethical requirements they require of their people, the code of ethics and so on, they are the only ones that should be recognized as doing this work, and they will make a very strong plea in that regard. The problem for you is that you're caught trying to put into place an act when the other discussion, frankly, hasn't been joined. I'm just wondering if there's some way we can work around this.

Mrs Johns: Do you want a recommendation, then, for that section? I could talk to the Ontario Association of Professional Social Workers and try to come up with a different label if someone doesn't have one at the table.

Mr Marchese: As a suggestion—

Mrs Caplan: I think I'm next.

The Chair: Yes, you are. Mrs Caplan is next, thank you.

Mrs Caplan: Actually, I think that Mrs Boyd puts the case extremely well and is very accurate in her portrayal. It's one of the reasons, in fact, that we brought forward this amendment, because a BSW is a social worker. They

have a degree in social work, and it is not defined narrowly.

The problem with doing it by regulation, as you have, without anything in the context of the act is that you in fact open that can of worms in the fight between the professions. If the statute says "social worker," then, by regulation, you can define what's appropriate for an MSW, what's appropriate for a BSW, but you will not be able to exclude the BSWs.

For anyone who remembers, I would hark back to the same sort of discussion that was going on in psychology between the master's degree, the MAs and the PhDs, and the struggle at the committee as we went through that was reminiscent of the 10 years prior to that as well. So anything that can be done to facilitate the intratensions within that complete professional social work, we think will be helpful. That's why we think our amendment is appropriate, because it still allows, by regulation, to define what's appropriate for an MA, what's appropriate for a BSW, a bachelor as well as a master's degree, but because we've specified the words "social work" in the statute, you can't exclude anybody. You can prescribe it by regulation and define it and fine-tune it and be specific, but we think this will be helpful to you in your sorting out of an issue that, as Mrs Boyd says, has plagued all of us, because you'd like to see some consensus.

Frankly I don't think consensus is going to be possible, because the college, for a whole lot of legitimate reasons, holds their view regarding the role of those who hold MSWs. But we believe there is an appropriate role for BSWs to play, and if the statute is clear that a social worker is legitimate, whether it's a bachelor's or a master's degree, that anyone with a degree in social work is a legitimate evaluator, duties to be defined and method by regulation, we think that helps solve your problem.

Mr Marchese: I was a trustee with the Toronto Board of Education for years, and this was one of the issues we dealt with. As my colleague Mrs Boyd said, it's a very difficult issue, because there were a number of PhDs in the field who wanted to say, "We are the only ones capable of doing it," and those with the BAs said: "But we do the same work on a daily basis. Why exclude us?" It was seen as a form of elitism on the part of this particular group of the PhDs versus those who didn't have it, yet the work was the same. The only difference is, "I've got a degree and you don't have the same degree."

It's a thorny issue, obviously, but I think Mrs Caplan's suggestion is a useful one. There are two suggestions. Either proceed with the way it's here and then fix it by regulation in the way you deem it appropriate; or if you didn't want to pass this right way, we could stand it down to allow you some time to reflect on an approach you might feel comfortable with. But to defeat it this way and to present it in the way you suggested would be a problem. Pass it in this form, with the motion as presented, or stand it down and propose different language that gets to the issues raised by the colleagues.

Mrs Caplan: There's a last point I'd make on this issue for anyone who's watching and perhaps wonders what this is about. We're dealing with the issue of the role of social workers, which within the health care field is not covered by the regulated health professions legisla-

tion, and you have to then wonder about the accountability. That's the issue here. The reality is that social workers are not in the fee-for-service system under health care, and therefore in order to do this function we're talking about, they would be employed. Not all employers require a master's degree in social work, and that's the reality.

The other thing is, you don't want to arbitrarily impose that. So by going with the regulation you have, you would again be precluding all those who are presently employed, who have a bachelor of social work, from doing a function which they may be doing today quite capably and with accountability to their employer. That's the final rationale. I didn't want anyone to be concerned that you'd have people out there in an unaccountable fashion without the regulation and so forth, and that's why we framed it in the way we have, hopefully so you would consider this as a way to facilitate a problem.

1050

Mrs Johns: I'd like to make some comments and I think legislative counsel would too, so we can hear all sides of this.

From my standpoint, your motion has the same problem in it, because you have to make a regulation and you have left that to my discretion. In effect, if I change the definition problem, which you have both drawn to my attention—and I truly appreciate that, because I was unaware that that was only master's people. No one brought that to my attention. You people have been in government for a long time and I appreciate you bringing that to my attention.

We could change my regulation to bring people who are proper evaluators into effect. In the regulation I have proposed, although I have made an error in what I have done with the Ontario College of Certified Social Workers, we have an intent here that we all agree is correct. I should give you an undertaking of some sort that we will put the proper perspective into this, but I want to make sure that I imply here that I'm not going to take just anybody who calls themselves a social worker. There is a level of expertise we're looking at, and we have to work very hard to find the people we want to be evaluators. I think there has to be some level we impose; I don't think we can just take this section out totally.

That would be my third recommendation to Mr Marchese's two others. I would say that we would go back and make some alterations to that section that took into effect what we were all talking about here as a result of your very valid comments.

Ms Halyna Perun: Halyna Perun from legal branch at Health. At page 107 of the bill, if you could take a look at the reg-making powers the act provides, in clause 83(1)(b) it says, "for the purpose of the definition of 'evaluator' in subsection 2(1), prescribing categories of persons as evaluators and prescribing the circumstances...." So already there is a power to prescribe the categories of persons as evaluators; you can prescribe a social worker with the following credentials. It can already be done, and that can certainly be addressed in a reg. Again, this is a draft regulation, and that could be worked out with the appropriate college and association.

Mrs Caplan: The concern we have is that by leaving it wholly to reg, by not using the words "social worker" in the statute, exactly what you have done is a more likely outcome. If you're going to give comfort that the statute responds to the concern that was expressed, to leave it to regulations, which can be changed, passed behind closed doors, no scrutiny—I hope you will accept our amendment later on that regs actually be published so people know what's happening, but there's no requirement in the legislation now for the regs to be published so that anyone is aware of them before they come into effect. The fact that you've tabled the reg with us today is appreciated, but I'd like to see all the regs you've got. Of course, it's unlikely that you'll table all the regs today, although I hope you'll decide to do that.

The process of reg-making is—I'm not going to use the word "secretive" in a pejorative sense, but it is. It's done behind closed doors, you consult with whom you decide to consult with, and there's no protection for people who are presently working as social workers. We agree that there should be a minimum standard. I want to be clear on that. The concern we have is that the pressures are usually for the maximum standard that excludes and leaves out those who are properly qualified.

It's one of the other reasons we think there should be some kind of consistent training program for evaluators as well as, and a separate one for assessors, because they have two very different functions. The difficulty you have is that because social work isn't a regulated profession under the Regulated Health Professions Act, they would not be impacted in the same way as the other professions will be, held accountable by their professional bodies. The only accountability is through the employer.

But if you leave them out of the act, I don't think they will have the comfort, especially having seen this reg, that you will respond to the very real issue: What's a reasonable standard? What is a standard that will give access to those people who are already employed and doing a similar function in the field?

Mrs Boyd: If in your reg, for example, you were to say something like "'Social worker' means a person who holds a degree in social work from either a recognized post-secondary educational institution or," probably more appropriately, "an accredited"—because most social worker programs are accredited. I've been part of the accreditation process at King's College, for example, and it's quite a rigorous process. That might solve your problem.

What you'd have to do, though, is check with the nursing homes and charitable homes for the aged and those groups to see whether they have people who might have diplomas as opposed to degrees in social service work doing some of this work for long-term care. That's the one concern I have. I suspect they might not; I suspect they might have as a minimal requirement at least a BSW, but I think you need to check on that because you might be impacting a whole set of people you weren't expecting to impact. Given, as we know, that the qualifications often tend to be different between acute care hospitals or some of those long-term-care facilities, you might need to check on that.

We will be voting with the Liberals on their amendment because we think it is probably safer. We certainly heard people say, and physicians say, that they would like social workers involved. We will be voting with the Liberals on the amendment, but if indeed we are not successful in getting this amendment in, we would really appreciate some consultation around how to do that reg so you're not condoning the kind of gatekeeping that has been very evident in the applications from this group. You will have to warn the members of your caucus that this is a very powerful and very persuasive group of people. The problem for service delivery is that they are very few compared to the people offering the services, even within your own government facilities, so you need to be really careful on that.

Mr David Tilson (Dufferin-Peel): The debate seems to be the issue of whether all social workers should be included as evaluators or should just those with an MSW be included as social workers. I'm not competent at this stage to enter into that debate, and I suspect many in this room are not competent to enter into this debate.

I understand the intent of the amendment. If you look, as was pointed out by ministry staff, at the regulation provisions on page 107 of section 83 which talk about what can be done by regulation and then look at what the draft regulation is doing, the draft regulation appears to be—and I'll accept your word for this at this stage, and I guess that's your criticism, that it excludes those with BSWs. That appears to be your criticism of the regulation.

But is this amendment really solving the problem? The debate continues. You're saying, "Let's say that social workers are going to be in there, but we don't know"—and maybe you do, maybe you're on one side or the other, but you're saying, "Define it by regulation." But that's what we're doing. It doesn't preclude, at a later date, the ministry or Mrs Johns or Mr Wilson from negotiating with the Ontario College of Certified Social Workers. I'm really in over my head on this topic, as to who should be in and who should be out; I don't know.

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Mrs Boyd: Don't negotiate with them or you'll get an answer that's—

Mr Tilson: But that's the issue. We believe there should be a college. I hope I'm correct in saying that. Mrs Johns will quickly correct me. Am I correct?

Interjections.

Mr Tilson: Well, I'm getting all kinds of help on this one. In any event, my question to Mrs Caplan is, aren't you really still saying, "We want social workers in. We're not telling you what to do, but solve it in regulation," which is in fact what we're doing now?

Mrs Caplan: In fact, the answer's no. I think we're being helpful. If you put the term "social worker" in the statute, anyone who comes from an accredited social work educational program would be able to challenge that they should be included and that the reg wouldn't be valid unless they were included. That's the intent. It's not to allow a narrow definition. We think the statute could be challenged if you were too narrow and left out those from accredited programs. Certainly it helps to establish a minimum standard that would allow those who felt they

were improperly left out to challenge. Frankly, there are some from programs that are not accredited that I think might challenge and be unsuccessful in their challenge.

But if you have the term "social work" in there, you would at least have a minimum that says, "Those who are accredited have to be"—because they would have the right to challenge the statute that they should be included, even though the term has never been formally defined; it has plagued all governments. We believe this would help you, in your defining by regulation, to be able to say: "Look, it's in the statute. We can't exclude those who have an accredited degree or come from an accredited program." That's the intent of the amendment, and that's the reason we think having it in the statute would be helpful to you, Mr Tilson.

I'm very sympathetic to the ground you're treading on and the language you've used. We're very aware of some of the minefields out there and what the problems are. In this one, let me tell you, we are trying to be helpful, so that when you ultimately have to deal with the issue of legislation for this profession, this is not a bad place to say, "We've now got a precedent where the term is in legislation."

Mr John O'Toole (Durham East): Just for my first participation in this committee, when I look at that definition in the statute with regard to evaluator, all the other classifications are, by nature, self-regulating groups. It would appear to me that you're being very specific in saying "social work," yet allowing it to define itself in regulation. I think there's a danger in that. It's an admission that there is a problem, because it isn't self-regulating; it hasn't defined itself what constitutes a certified practitioner. I think you're opening up a box which will be challenged, and I think there's enough softness in the regulation itself which would allow them to define more clearly without enshrining it right in the legislation.

They need to address it. All the rest are colleges that are self-regulating. We don't define that because of lack of expertise, obviously. But I'm comfortable with the regulations as they currently read that they could do the job, without making any changes. I personally won't be supporting the amendment, although I appreciate it. I recognize that they should get on with the job of regulating themselves and sorting out whether it's a bachelor of social work or a master's in social work. Who's the most competent is for them to decide, not us.

Mrs Caplan: In fact, it's not. It is for you to decide because you have to bring in the statute that would give them self-regulatory power. That's the difficulty there has been, that it's not left to the profession itself to deal with it.

The Chair: Mr O'Toole has the floor, Mrs Caplan.

Mr O'Toole: I appreciate their feedback. I'll say one thing. Who's to say that somebody with a bachelor of social work is any more competent than somebody with a college program and is a nurse? It's a basket of—

Mrs Caplan: You've promised to give them legislation, and that's one of the issues you'd have to deal with in that legislation. We think this would be helpful to you as you make those decisions. Since you've made the commitment to do that, I suggest you're going to have a good time.

Mrs Boyd: We are really trying to be very friendly to your legislation. The reality is that social workers are not self-governing; they have no statute governing them. If you are today, on behalf of your party, making a commitment that you're going to allow them to be self-regulating, you are stepping into a swamp.

I suggest that what we're trying to do for you is to say you definitely want social workers to be able to be evaluators—*de facto* they are in many institutions—without your getting into having to make a commitment at this point, when you clearly are not aware of all the pitfalls involved, of agreeing that you're going to pass legislation self-regulating them.

We're trying to be helpful. We have been through the wars on this one in our terms of government, Mrs Caplan probably more than me. We want you to note that this is a much bigger issue than you appear to appreciate, and it is very big for government because many of the social workers who are in the employ of government who would be doing evaluations are not recognized by the so-called college of professional social workers, I think it is, as social workers because they do not have MSWs.

All we're trying to say to you is that we know of a problem with this particular college and its self-definition of who is and who is not a social worker, and it would be very helpful for you to have "social worker" in under "evaluator" so it's there, it's enshrined, and then when you come to deal with these problems in regulation, you will already have recognized the reality of many social workers doing evaluations.

The Chair: Thank you, Mrs Boyd. Shall the amendment pass?

Mr Marchese: Another recorded vote.

Ayes

Boyd, Caplan, Marchese, Ramsay.

Nays

Boushy, Guzzo, Johns, O'Toole, Parker, Tilson.

The Chair: The motion is defeated. We will now proceed to the third party's motion in regard to subsection 2(1), as contained on page 84.

Mrs Boyd: This is to the same section in terms of the definition of "evaluator" and again appears in the act on page 64.

I move that the definition of "evaluator" in subsection 2(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "as evaluators" in the last two lines and substituting "who have successfully completed the courses of training prescribed by the regulations."

In other words, it is our belief, and it was the belief of many of the people who came in front of us, that the assumption inherent in this bill that health care professionals are *de facto* able to evaluate capacity may not be correct, and that what we need to do is have the regulations to this act prescribe what kind of training is necessary to ensure that there is some standard of evaluation applied. We heard many, many people saying, "Do people really have the knowledge that's required to evaluate capacity?" Since we are saying that when people

are deemed to be incapable, other people get to make their decisions for them, for all those who might be deemed incapable, they want to have a sense that there is a standard.

It seems to me you'll want to do this anyway, but it would just add some sureness that there will be courses. You still prescribe them by regulation, so you've got lots of time to do the kind of consultation, looking at what has already been prepared by the Advocacy Commission, for example, because they actually do have some of these things in place. Some of the physicians who came had suggestions around evaluation and others felt they were still too complex. But it would give you an opportunity to actually enshrine that, and I sincerely hope you would accept this amendment.

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The Chair: Mr O'Toole has a few short words for us.

Mr O'Toole: Yes, just the same argument that applied in the previous definition. In the regulations now it's not as prescriptive as you're implying, and I personally am a little more comfortable; there are some options. It's "health practitioner or a member of a category of persons prescribed in the regulations" as evaluators. If you look to the regulations, they are less prescriptive and more at the operational level of conducting business in some reasonable fashion. It says, "Prescribing things that do not constitute treatment." That's very broad and less prescriptive.

Mrs Johns: I want to speak to this issue for a second. I want first of all to draw the difference between "evaluator" and "assessor" in this particular case. Unlike assessors, who may have never met the person before, an evaluator in many cases has worked with this person all along the line, maybe a nurse at a long-term-care facility—has some ability to know the person. I wanted to draw that to your attention first.

They are usually dealing with a discrete issue. One of my notes says: "Capacity determination under part III and part IV of the Health Care Consent Act is not some global assessment of capacity but applies to a discrete issue at hand. Health practitioners and social workers already have the skills necessary to decide on these issues."

I asked the long-term-care branch exactly how they were going to ensure there was a level that was consistent throughout the ministry, that we could ensure evaluators had some commonality, if you will. They have some guidelines they're setting out and working on at this particular point. It's the process for development of guidelines and training materials for evaluators. I'm not sure I should give you copies of this—I will, but I'll read you what I have right now. I think that would be best:

"The ministry has established a task force to develop guidelines and training materials for evaluators for their use if they are asked to determine capacity for persons to make decisions regarding long-term-care facility admissions or to determine capacity for persons to make a decision regarding a personal assistance service."

I have a number of guidelines and I will copy it, but I was wondering if it would be informative if we brought up the long-term-care person who's working on that, if you wanted to hear anything from them and this task force. That would probably be appropriate.

Ms Anna Burwash: My name is Anna Burwash. I am in the long-term-care policy branch of the Ministry of Health.

Mrs Johns is quite correct that we are in the process of developing guidelines for evaluators. One of the things I'd like to add up front, particularly about the determining capability to make a decision regarding admission, is that what we're trying to do in having the evaluator make his or her decision in this regard is that we're trying to integrate this as closely into the long-term-care facility admission process as possible. We want to make it the least intrusive to the consumer as we possibly can.

What we envision in most situations is that the decision regarding capability for admission will be made by an evaluator in the context of doing a functional assessment, and every long-term-care applicant has to have a functional assessment as one of the pieces of information the placement coordination service considers in determining the applicant's eligibility for admission to a long-term-care facility. We can disseminate the guidelines very effectively because the placement coordination services requests a functional assessment on behalf of each applicant, so we can very easily make sure these guidelines get to the right people. That's one of the things I wanted to emphasize.

In the situation of the personal assistance service, currently this will apply to a long-term-care facility; in the future, it may apply more broadly. In a long-term-care facility, we see that in most situations long-term-care facility staff would actually be evaluators, so again we have the opportunity to disseminate these guidelines very effectively.

Mrs Boyd: I'm delighted. We knew, of course, that guidelines were being prepared and that that was one of the requirements under the long-term-care facility. Guidelines and training in evaluation are two different things.

I'd like to quote for the committee what Judith Wahl of the Advocacy Centre for the Elderly said on this issue because I think it's very important for us to remember what the people coming in front of us said:

"The Health Care Consent Act assumes that all health practitioners are able to assess whether a person is capable with respect to treatment decisions within their particular field of expertise.

"The HCCA also assumes that particular classes of health practitioners, termed 'evaluators,' are able to assess whether someone is capable of admission and service decisions. These assessments of capacity for admission and service decisions are not assessments that these health care practitioners would ordinarily do. These assessments are assessments of capacity in relation to types of decision-making outside the field of practice of these health practitioners," and she gives an example.

"The audiologist may be able to assess capacity of a person to consent to treatment related to hearing loss. However, the audiologist does not ordinarily assess a person's capacity to consent to admission to a long-term-care facility," and your act provides for any regulated health care professional to make that decision. It's a problem.

"Health care practitioners ordinarily have little or no training in capacity assessment. This is an area where

subjective factors can play an important part in deciding whether a person has capacity."

I would remind the committee that we heard from many members of the public that this is their biggest worry, that people who are not skilled in capacity assessment might decide they're incapable. Indeed, some of the examples we heard of from the rights advisers were situations where a health care practitioner decided someone was capable—remember the Clemens case; in that case they said he was capable—or incapable in some other cases, whereas as time progressed and as the board looked at some of these decisions, that was not the case.

The Advocacy Centre for the Elderly made some recommendations to us that I think we would do well to heed. It is recommended that:

"All health practitioners should be trained to do capacity assessments in respect to treatment decisions within their own field of expertise. The training should be part of the requirement to become licensed as a particular health care professional. Existing health practitioners could be provided with training as part of a continuing education program. Guidelines on assessment should be provided either in regulation or in policy," and we know that's the plan you have.

Going on to the issue of admission:

"It is recommended that all evaluators receive training with respect to capacity assessment for the purpose of admission and personal assistance plans and be provided with guidelines for this purpose, either in regulation or in policy. The training could also be part of the ordinary education process to become a particular type of health practitioner for those classes of health practitioners that are listed as evaluators. Existing health practitioners in these classes could be provided with training as part of a continuing education program. As an evaluator is doing an assessment that does not relate to capacity for decision-making within their field or professional expertise, it is also recommended that the evaluator be required to sign a statement at the time the evaluation is done to confirm that he or she has had this training and is qualified to do the evaluation. In this way, those members of a class of health practitioner who are evaluators, who do not wish to perform evaluations, need not take the training and the public will be assured that only persons qualified to do assessments are engaging in this activity."

It seems to me that it is in the best interests of your legislation that you talk about training. It's one of your few ways of leveraging the colleges, to insist on that kind of training being done for their members. If you say that you're going to prescribe the training by regulation, then you have the opportunity to determine what that training might do in conjunction with the colleges.

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For example, if you are satisfied that all the colleges have complied with this, you might want to say in your regulation that all of the regulated health care professionals, according to the regulations under their particular acts, and then you might want to add social workers separately, but it seems to me that assuring people that training in capacity assessment around these things is very important—it's very different from guidelines. Guidelines are good. They're necessary. I'm glad that you're as far

along with them as you are. That's great. But I do think that you also need training, even to understand some of the concepts probably within your guidelines.

Ms Burwash: I think we're going to try to make our guidelines as practical as we possibly can. For example, one of the other things that we're doing with respect to admission is we actually have a committee that is working on developing questions that an evaluator would ask if the evaluator has reasonable grounds to go that far, because again you have to remember that there's a general presumption of capacity. So in a number of cases, when a person goes into someone's home to do this and it becomes very obvious that this person is quite capable, they're not going any extra steps. What we don't want to do is end up having to send an additional person into everyone's home who is applying for long-term-care-facility admission. Right now, our placement coordination services tell us that somewhere between 40% and 75% of the applicants for long-term-care admission are incapable.

Mr Marchese: I just wanted to bring forward some of the comments my colleague has made, the point about guidelines versus training, because they are very different, and that's the essence of the difference we have with respect to what was being said. Here are your assumptions. This is the way you're operating. The assumption is that all evaluators are capable. Therefore, all they really need are guidelines. We'll make them as good as we can and we'll disseminate them. That's easy. That's not a problem. I understand that. But the worry that some of the deputants had was that training should really be part of what we need to do as opposed to simply just giving them guidelines. Guidelines are useful. They're an important part of what should happen, but what we heard was that training is much more important to them in terms of the security it gives people about the decisions they're making.

The problem is that no one wants training. That's really part of the resistance. Nobody wants to go through a one-day or a two-day course to learn how this happens. They'd much prefer to get some guidelines so they don't have to go anywhere. You read it for an hour and you say: "Okay. Now I've read this, I'm okay. I can do the job." But that's really the problem and that's the concern that people have. If you're going to educate, education doesn't simply happen by a guideline. It happens in training as you're talking to someone who's got a whole range of different experiences. That's why I will be supporting the motion, because it goes further than guidelines. Although guidelines are useful, they're not sufficient.

The Chair: Thank you. Mr Stockwell.

Mr Chris Stockwell (Etobicoke West): No.

The Chair: Oh. The committee welcomes the attendance of the honourable Chris Stockwell.

Mr Stockwell: Thank you so much.

Mrs Boyd: I'd just like to also remind the committee of the very vehement presentation that we had from Dr Molloy, who has very strong views on how complicated capacity assessment can be, particularly in the first instance where we were talking about evaluation. I would agree with him to the extent that he was saying very clearly that we need this to be as simplified as possible

so that in fact it is able to be done by a lot of professionals. What he left out was the fact that whatever kind of an instrument is developed or whatever kind of guidelines are developed, people do need training in how to apply those. That's when we get into difficulty, is when we make assumptions that simply because people have training or degrees in one area, they automatically can extend their expertise into other areas. If we remember the Clemens case, folks, we had a decision that somebody was capable and then a whole lot of things followed. That decision could easily have been the other way. There are real issues around how that decision is made, and what follows from that is life-threatening or life-giving in some cases.

Mrs Johns: But that's a treatment; that's not an evaluator.

Mrs Boyd: But admission to a long-term-care facility, for example, if we think of some of the examples that we had. Remember the 92-year-old man. His health care professional decided that because he wanted to walk two miles a day and kept his own garden at 92, that wasn't appropriate. It was too tiring for him and therefore he was incapable of making that decision. Now remember that.

Mrs Johns: But that wasn't for capacity either.

Mrs Boyd: I'm sorry, but they decided that he was incapable, and it was only when the rights adviser told him he didn't have to accept that if he didn't agree with it, that there were steps he could take, he indeed did appeal that. That's the whole issue here. Who is making those decisions on what grounds? Guidelines wouldn't have helped there because this is such a subjective thing, whereas if we really train people that the act is saying people should be independent, they should make their own choices as long as possible—this is a foreign concept to many health care professionals.

I can tell you, depending on the era of their training, there are many health care professionals who believe that the health care professional always knows better than the patient. You have to retrain those folks into what, in the late 1990s, is in fact the way health care is being provided. Without training, I can assure you that you will run into exactly the same kind of problem and resistance. We are not talking, just to refer to the person from the long-term-care area, of an additional person going into the house; that's exactly what none of us wants. What we want are existing people who are health care professionals or social workers to have consistent training in how to make this decision. That's all we want and we're saying it should be built into the training for health care professionals who are currently training and it should be part of in-course training for people who are actually doing this. If we listen to the Ottawa General Hospital, listen to what the people there said:

"Implementation of the Health Care Consent Act: Thought and time must be given to allow proper implementation of the new law. Health care professionals and their institutions should be provided with practical guidelines"—which I'm glad to hear you're doing—"to follow to ensure that the new act is initiated with consistency across Ontario. Time is also needed to educate those

who will be using the new law as this will lead to maximum compliance and protection of patients' rights."

We heard that although the assumption was made that the colleges were going to take care of education under the Consent to Treatment Act, that didn't happen and that many of the problems that arose around the Consent to Treatment Act arose because that training was not there and was not made available and was not required. We would not want the government to make the same error that we made in terms of that act, of assuming that the colleges would undertake that voluntarily. They will not. 1130

Mrs Caplan: I think this is an important point and I'm pleased to hear that you're developing guidelines. I assumed that you would. The question is, how are you going to make sure that self-governing colleges require their members to follow the guidelines and make sure they're part of their professional standards? That's my question. I think it's a very important one, because in self-governing professions they decide. If you think something is important, such as training, then as government you have an obligation to make sure that's clear. There are a few issues that we'll be addressing along those lines, because while I'm very supportive of self-governing professions, I do think they need guidance from lawmakers and those who identify issues which could be resolved through prevention.

We heard from a number of organizations that appeared before this committee that were very clear on the need for some kind of approach to education and training in this area. I'm just going to put them on the record, if I could. "Evaluators should have access to education and should have guidelines with respect to determining capacity" by the Ontario Nursing Home Association. The psychogeriatric community clinic, Victoria Hospital, made the point that, "Only those practitioners who are directly involved in providing care that requires residents in a care facility should be authorized as evaluators." That could be part of your guidelines. I don't know whether it's your intention to do that or not, but I think that the placement coordination people have to ensure that whoever they have working for them meets the guidelines. That's another approach that you could have. As they are the employers, there could be some accountability there.

But because a lot of these evaluations and evaluators for access to care facilities—that's only one of the responsibilities of an evaluator. The same evaluator can also be making assessments for treatment. So I think you've got to be clear on the differences there. I think the guidelines have to address that. While you will have accountability from placement coordination, if it is a requirement that all admissions go through placement coordination services, one of the things that you do is to say that only placement coordination will have that responsibility and no one who is not connected with placement coordination can do an evaluation for entrants to a long-term-care facility.

My concern is that if you're not going to require the colleges to make sure that their people are properly trained to do this, then how are you going to ensure the accountability? That's my question. How are you going

to ensure that the people who are doing these evaluations are properly trained? You can have all the guidelines you want. If nobody's paying any attention to them, there's no accountability, no quality assurance, what are they worth? How are you going to make sure that the people who are doing those evaluations, whether they are for admission to a facility or for the purpose of treatment, are accountable? Unless you're saying that you're going to make this request of the colleges, and I haven't heard you say today that the minister's going to make a formal request to the colleges. Is that your intention?

Mrs Johns: I'll just answer a couple of the questions that you were talking about there.

Mrs Caplan: These are serious issues.

Mrs Johns: I agree that they're serious issues. No one wants to see someone evaluating who doesn't know what they're doing. I think that's one of the reasons why we talked about the minimum standard with the social workers too. I think we're all talking about the same issues.

From my standpoint, having worked in the Ministry of Health, as many people on this side of the table have too, I think that the long-term-care section of the Ministry of Health has a lot of control over the long-term-care facility and what goes on in there. For example, there's the PCS, which is funded by the long-term-care branch. There is also the inspection that happens in the facilities. From my standpoint, I believe that guidelines set out would be followed and would be something that we could monitor to make sure that they are being handled. From my standpoint, I can see what you're saying if it's someone whom we don't have control over and we're not paying the bill, but in long-term-care facilities we are and so there is accountability there on a daily basis.

Mrs Caplan: In fact, you don't have control, because you are simply the funder.

Mrs Johns: We have inspections, though.

Mrs Caplan: You don't have control because these are professionals who are accountable to self-governing professions. Some of them may be accountable to their employer, but they are not accountable to the ministry. That's an important point, to understand how the place functions. The ministry does not—and I would argue the ministry should not—have control, which is why you want to set up accountability structures that are in place, but it does not require the centralized control of the ministry. So there's an important role for the colleges to play.

We heard, for example, from the Ottawa General Hospital. They said that it was important to clarify the training of evaluators and the criteria they will use to determine capacity. The Alzheimer Society of Ottawa-Carleton said anyone wishing to be an evaluator must be trained and certified.

I don't think guidelines alone will accomplish that unless the colleges are active in their agreement to ensure that as a standard of professional conduct, anyone who does evaluation has a training or a certification to permit that. Guidelines are fine. But you don't control them, Mrs Johns, and in fact you don't even manage them. They're not accountable to you. They don't work for you. You just pay them, and sometimes you don't even pay them, they're employed by others in the sector. That's the problem. Guidelines don't have to be followed unless there's

an accountability mechanism, and that has to include the colleges, for those that are self-governing professions.

So the question is, is the minister going to request the colleges to bring in the requirement as part of their professional standards or establish the programs? I mean, how's that going to happen?

I remember we heard from one presenter—I don't want to confuse the issue. This time they were talking about capacity assessment. The capacity assessment office has a one-week training course, and they said that was far too onerous for physicians to have to take that course in order to be trained. Well, we know you cannot be a qualified assessor without one week of training, and that training is done through the capacity assessment office. There's nothing comparable to that for evaluators. So right now it's wide open, and that's a real concern.

Guidelines are good for a step, but how are you going to make sure anybody pays any attention to your guidelines is the question, since these people are self-governing professionals who are accountable either to their employers or to their colleges, and if they don't work—that's why I mentioned the placement coordination service. If they don't work for the placement coordination service and they're doing—so you want it broadened. How are you going to make sure that you have accountability? That's the question. I don't think it's been answered.

These are difficult and complicated issues, but you're dealing with people's lives. You're dealing with people who are going to be deemed incapable for the purpose of an admission to a long-term-care facility. If you don't think that's going to have an impact on people's lives, it does. So you have to make sure that the person who's doing that assessment, that evaluator, is accountable and properly trained.

Mrs Johns: Just to add to the debate on this, if I might, we believe guidelines are good and appropriate, but I also want to say that there's another step that goes beyond that. The person, if he's found incapable, has the right of review. So from that standpoint, there is another alternative to it if they believe the evaluator hasn't done the job that's the right job.

Mrs Caplan: I'm really glad you raised that.

Mrs Johns: I'm sure you are.

Mrs Caplan: Because that means that you're—I'm hoping that you'll support our amendment, because the person who is deemed incapable and told that they're—they don't even have to be told that they've been found incapable for the purpose of an admission to a long-term-care facility, and they don't have to be told that they have a right of an appeal. So if that's your test for "Don't worry, they're going to be able to appeal," there's no obligation.

In fact, the amendment that you brought forward under the category of information, yesterday I read in, and I'm going to say it again when we get to it, and I would ask your drafters to go back to the drafting table, because frankly, the inquest said legislation has to be clear and I would like a legal opinion on what that means when it says under information—it's not an obligation to inform. I read it, and I said: "How would a court interpret this? Does this have any meaning?" I think it doesn't.

This deals with the issue that you said that people will have the right to appeal while under your legislation nobody has to tell them they've been found incapable, nobody has to tell them they are being admitted to a long-term-care facility and no one has to tell them they could complain about this and go to the board.

The need to have properly trained and accountable evaluators making those decisions that are affecting people's lives is extremely important, and you haven't given us any assurance that there's that accountability. Are you asking the colleges to make sure that that's a matter of their professional standards? Is that your intent?

The Chair: Thank you, Mrs Caplan. That really isn't dealing with this particular section, I don't believe.

Mrs Caplan: Well, it is, because this has to do with evaluators.

The Chair: We're going to deal with that again.

1140

Mrs Caplan: But that's on the question of information. This question now is, for the purpose of training of evaluators, which is dealing with this section, is it the intention of the minister to request that the colleges include that in their professional standards requirements?

Mrs Johns: The only request that we're going to make of the colleges is the one that we outlined to Michael Dixon. I gave you a copy of that last week and that's gone out to all the colleges outlined in the—

Mrs Caplan: But that has to do with—

Mrs Johns: That's the only request we're making.

Mrs Caplan: So on this one, other than by having a guideline out there, you're not going to require any accountability to the guideline. How are you going to ensure accountability to the guideline?

Mrs Johns: We believe that the long-term-care department of the Ministry of Health will implement this. We also have faith in the professional standards of the people who are working as evaluators, that they will evaluate correctly and that they will do what's right for their patient as part of their oath to their profession.

Mrs Caplan: You've mentioned the words "professional standards," but their professional standards as outlined by their colleges will not reflect that requirement and that purpose. Is that correct?

Mrs Johns: I'm sure there are professional standards for these issues at this time. So from my standpoint, are you saying that I'm going to add new professional standards? No, I'm not.

Mrs Caplan: You wouldn't, but you could request the independent self-governing colleges to ensure that that is part of their professional standard. That's the request.

Mr Tilson: The minister can do that now.

Mrs Caplan: I'm asking, is he going to do that? That's the question. If he can do that, is he going to do that, or are you just going to have a guideline that nobody pays any attention to?

Mrs Johns: Well, we don't believe, Mrs Caplan, they're not going to pay any attention to it. We believe people are going to follow this process of following the guidelines that are set up by the long-term-care.

Mrs Caplan: The only thing I'd say is that we had all kinds of representation to this committee that suggested the need for training, the need for certification for evalu-

ators and a need for that kind of accountability. And I think that while everyone welcomes the guideline, guidelines are meaningless unless you've got some accountability, and I don't think you've satisfied us there is any accountability. I hope you'll reconsider that.

The Acting Chair (Mr Ed Doyle): Are there any further speakers on this issue?

Mrs Boyd: Yes. I'm totally amazed. We thought this would be a very simple addition. We're not discussing here what your regulations are going to be. We're just discussing that there needs to be an acknowledgement in the bill that training on evaluation issues is necessary, and it amazes me that the government doesn't do that. I mean, we spent three weeks listening to people talk about their fears around the real meaning of being able to make their own decisions when there was little control and little training in whether or not people were capable of making those decisions.

I frankly am just stunned that (a) you don't think training is necessary and (b) you're going to say, "Well, the people of Ontario just have to trust that somehow this is all going to work out because all the health care professions have professional standards to cover this." They don't. They don't cover the issue of evaluation. We had lots of professional health care providers come in front of us and say, "We need training in evaluating so that we can in fact follow this law so that compliance will be meaningful."

I'm totally amazed that we've gone on for this length of time with a request that simply indicates the people who do this kind of function should have some training. You still have all the opportunity to decide what that training is, two hours or two days or two weeks or whatever you decide it's going to be, but I'm just absolutely amazed, and I'm quite sure there are thousands of elderly people in the province who are saying: "What? You mean the government is saying that people can decide that I'm incapable of making a decision about going into a long-term-care facility without training? That's shocking."

Anyone who's been through health care professional training in the last 40 years will tell you that in most of the regulated professions, capacity decisions have not been part of their training, not for this purpose. We heard the people from Victoria Hospital, Dr Harris, talk about how difficult capacity assessment is as people become elderly, as there are differing forms of dementia which begin to appear, and we certainly heard health care consumers talk about their fears around these things. So I am quite amazed that this has become an issue and that the government doesn't believe that there ought to be training for evaluators.

I think we should call the question, Mr Chair.

The Acting Chair: I have one more speaker.

Mr O'Toole: Just one comment. It seems to be implied that somehow training is something we're opposed—

Mrs Caplan: Point of order, Mr Chair: A motion to call the question takes precedence. It's not debatable. You have to vote on it.

Mr O'Toole: I'm making a comment on Mrs Boyd's remarks.

The Acting Chair: She said, "I think we should call the question." Did you make that motion?

Mrs Boyd: I did not make that motion.

Mrs Caplan: Oh, I thought you did. Sorry.

The Acting Chair: Carry on, Mr O'Toole.

Mr O'Toole: Just to continue very briefly, I recognize that training is an important part of the assessment process, but it seems to imply that somehow a training level—that it's an exact science or it's an exacting methodology. Really, that isn't the case, and to imply that training is somehow going to eliminate this ambiguity or the right of appeal of the patient is misleading.

I personally believe that the professional caregivers there, as a team of people, would certainly go through an assessment exercise, and to imply that one single person with a specific and appropriate training would be somehow competent over the rest of the caregiving community would be misleading. To think that we could just pull out a master of whatever degree and say that that's a competent level of assessment, bingo, you have the answer, it's not that simple.

Mrs Boyd: I think Mr O'Toole should understand that in fact that is the effect of the current legislation. It says that any health care professional is de facto able to make an assessment of capacity. That's what we're objecting to. We're saying that in fact that degree does not give them that, and all we're saying is that if people are going to make evaluations on this, they need specific training in this. They don't get it with their degrees. You just simply made my point. I am agreeing with you absolutely, that just because somebody holds a particular degree does not give them the ability to make that determination properly. All we're saying is that you as the government ought to be requiring that whatever you decide by regulation is the appropriate course of training, it is required before someone does that. That's all we're saying.

Mr O'Toole: I don't know if you're reading the right—

The Chair: I'm sorry, I didn't recognize you, Mr O'Toole. Mrs Caplan.

Mrs Caplan: We don't have the regulations before us, but in fact you have made the point exactly that Mrs Boyd was trying to make. And frankly, if you had answered my questions in the affirmative, that you were going to request the colleges to do this, then I would be quite comfortable to not support this amendment. But given the fact that you have not assured us that you're going to engage the colleges in making sure their professionals are trained as a matter of their professional standard, I have to support this amendment, because it's the only way I can send out a message that says that I think those people who are doing evaluations that will have an impact on people's lives should be trained is by supporting this amendment.

Now, I don't think this amendment is necessarily the only or best way of accomplishing that, but you haven't given me any confidence that you have any other plan that will hold people accountable to a standard, as opposed to a guideline, that could—I mean, you say you believe everybody is going to obey the guideline. The reality is this is not a perfect world, and unless you have accountability in place, people will not always live up to

the high standard that you hope they will. Unless you have some kind of a commitment from the colleges that they are going to train their professionals to be able to do this, we know that employers may expect that professionals will be able to do this, even though they haven't got the training, and the reality is that there are many people out there now who will be doing this in good conscience who are not properly trained. So you have to give us some assurance that you're going to do something in the area of training and accountability. I'm going to support this because you haven't answered any of the questions that would suggest that there is a better alternative.

1150

Mrs Boyd: Call the question.

The Chair: Excuse me. You cannot call the question, unfortunately. If you do that, we will have a problem. May I point that out to you?

While we have a moment, perhaps I might basically tell you what the clerk advises. If I attempt to move to the question, that's okay, but if someone from the floor calls the question, we must go on that matter to the whole section, which will eliminate consideration of the following amendments, and I know we don't want to do that.

Mrs Boyd: Thank you, Mr Chair. I appreciate that.

The Chair: But since no one else is on my list, perhaps I could go to the question now. Shall the amendment carry?

Mrs Boyd: Recorded vote, please.

Ayes

Boyd, Michael Brown, Caplan, Marchese.

Nays

Boushy, Doyle, Johns, Leadston, O'Toole, Parker, Tilson.

The Chair: The motion is defeated. We have seven minutes before 12, so we can proceed to the government motion on 2(1), which is contained, I believe, on page 85.

Mrs Johns: It's on page 65 in the bill and it relates to subsection 2(1):

I move that the definition of "personal assistance plan" in subsection 2(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out.

I think we talked about this yesterday, and if anyone wants to have discussion again, I will be happy to do that, but we're following through with the College of Nurses and a number of different groups who suggested this.

The Chair: Shall the amendment pass? Agreed? Any in opposition? The motion is carried and the amendment is carried.

I take it we have a second one dealing with the same subsection on page 86, Mrs Johns.

Mrs Johns: It's not exactly what you expressed, Mr Chair, but I'll go forward anyway. It's on page 86, and page 65 in the bill:

I move that the definition of "personal assistance service" in subsection 2(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"'personal assistance service' means assistance with or supervision of a routine activity of living, and includes a group of personal assistance services or a plan setting out personal assistance services to be provided to a person, but does not include anything prescribed by the regulations as not constituting a personal assistance service."

I guess we should probably talk to this motion. What we have done that is different in this motion than was somewhat suggested when we talked about the purpose clause that the NDP brought forward was that we changed activities of daily living to routine living, if you'll remember the argument on that, as a result of not necessarily every day. Service providers have indicated that the concept of routine activities of living is well understood and that the examples are unnecessary and can be confusing, for example, the reference to health care when there is a separate part of the act dealing with the treatment.

We have support for this change from the College of Nurses, the Ontario Hospital Association, the Ontario Nursing Home Association, the Ontario Association of Non-Profit Homes and Services for Seniors, the Alzheimer Association of Ontario and the Ad Hoc Coalition.

Mrs Boyd: We certainly don't object to the part of it that now describes this as a personal assistance service and so on, but what we do object to, and what I find hard to believe all those associations are in favour of, is taking out some of the detail, the examples.

The definition that is being struck out by this motion reads: "'personal assistance service' means assistance with or supervision of a routine activity of living, including one that relates to a person's health care, nutrition, shelter, clothing, hygiene or safety, but does not include anything prescribed by the regulations as not constituting a personal assistance service."

We have had many, many discussions around some of the issues about what constitutes "routine personal services," and we agree with the government's position that we need to move to that—and our next amendment actually was wanting to talk to daily living and we're quite happy to leave that—but we do believe that you have to tell what is included. That was a confusion for a lot of people. In fact, it has been a bit of a confusion among us on the committee at times, what constitutes a routine activity and what is treatment. We certainly agree that there needs to be some definition between those routine activities and between treatment.

I would ask the parliamentary assistant—given the discussions that we've had about some of these elements of personal services, I really believe that we need to have inclusion of some of those activities at least as examples, and they could be specified as just examples so that it wouldn't necessarily include all of them. Those, I would say, must have hygiene, dressing, ambulation, washing, eating, drinking, grooming, elimination, positioning; those are all very important.

In my experience—and it's fairly lengthy—with some of the care facilities, if you don't specify that people get to participate in some of these discussions, for example around positioning—for many disabled people positioning is the most important thing; positioning in a chair, positioning in bed, because they spend many hours sitting

in the same position unless people move them. It's a fine line between personal assistance service in positioning and when that has to become treatment for a decubitus, for a bed sore.

We've had a lot of discussion around nutrition and hydration and around the need to keep people as independent as possible. If you read the article that was provided in response to the gentleman who came and spoke to us about some of the real problems faced—the abuse problems faced in nursing homes, for example—you will know that one of the issues is whether or not people are moved, whether in fact they're encouraged to walk. This is not an easy thing to do, and yet the whole gist of this bill is to keep people as active and as independent as possible. These personal assistance services are crucial to fostering that.

I wonder if I could ask the parliamentary assistant why those examples that were there—and safety was one of them, and we didn't include it in our amendment and should have—aren't being described at least as examples, if not a totally inclusive list?

Mrs Johns: I think what we were trying to do was to not eliminate any specific thing and we felt that we would endanger, that they would say, "Okay, this is the list of items." We really believed that when we took in activities of routine living, that definition was fairly well understood and people would take from that elimination, positioning, and that actually when you set up a list, you open yourself to the fact that those are the only items people will consider. That was our rationale for it.

1200

The Chair: It's now 12 o'clock and a suitable time to recess. Mrs Boyd wanted to speak in any event. We have a subcommittee meeting for 10 minutes, so if we recess till 1:30, I'd ask—

Mr Tilson: Mr Chair, we're not making much progress with this bill and I'd recommend that instead of lunch being an hour and a half we restrict that to 45 minutes.

The Chair: Is there any objection to 45 minutes?

Mr Tilson: You should be able to have lunch in 45 minutes.

The Chair: Back at 1 o'clock?

Mr Tilson: Yes.

The Chair: I think we need unanimous consent to that. At 1 o'clock, the subcommittee was supposedly meeting for 10 minutes. Is there unanimous consent on meeting back here at 1 o'clock?

Mr Ramsay: As long as we adjourn at 5.

The Chair: Thank you, Mr Ramsay. The question I'm asking, however, is, is there unanimous consent that we meet back here at 1 o'clock? If there is not, then it will remain 1:30. Is there objection to meeting at 1 o'clock, recessing till 1?

Mr Ramsay: Yes, there is, unless we have agreement that we adjourn at 5.

Mr Tilson: I move that this committee adjourn for lunch until 1 o'clock.

The Chair: Questions or comments? Shall we have a debate on that topic?

Mr Tilson: There's no debate on a motion for adjournment.

The Chair: It's a recess. There is debate on this one.

Mr Tilson: You're right. A motion to recess until 1 o'clock.

The Chair: If there's no debate—Mr Ramsay.

Mr Ramsay: Could I move a friendly amendment to that?

The Chair: It depends how friendly you are with Mr Tilson.

Mr Ramsay: And that we adjourn at 5 o'clock.

The Chair: Do you accept that?

Mr Tilson: I'm not too friendly with Mr Ramsay just now; perhaps later.

Mrs Caplan: This is ridiculous.

Mr Tilson: I agree it's ridiculous. Let's adjourn until 1 o'clock and get on with the business of this committee.

The Chair: We do not have unanimous consent for that. We have a motion and we have an amendment. Was that a formal amendment, Mr Ramsay?

Mr Ramsay: Yes, it was.

The Chair: Mr Ramsay has moved that we adjourn at 5 o'clock this afternoon. All those in favour of that amendment?

Mr Marchese: We're speaking to it, Mr Chair.

The Chair: You're speaking to Mr Ramsay's amendment?

Mr Marchese: To the motion. I had my hand up to speak to the motion, the amendment, the whole motion, the whole thing.

The Chair: Right now what we have on the floor is Mr Ramsay's amendment. Please speak to it, Mr Marchese.

Mr Marchese: I'd like to simply ask the subcommittee to deal with the issue of time. I thought we had dealt with that when I spoke to Mr Tilson. I'm surprised to have seen this motion. It's painful to have to do this over and over again. The subcommittee's meeting to deal with the issue of time. Could you do that as a subcommittee? Can we leave the time as we have agreed before—hopefully, the mover will withdraw it—and have the subcommittee deal with this issue? No one here is preventing discussion on these issues. We hope to finish all of the amendments by Thursday. The motion almost attempts to say that we're not trying to get through these amendments, and we are. Could I ask the mover to withdraw it, and to withdraw the amendment, and the subcommittee to deal with these issues?

Mr Tilson: We've got 75 amendments to go through.

Mrs Caplan: Relax.

The Chair: Members, we all have low blood sugar before lunch. Mr Tilson, will you withdraw your motion, and we'll let the subcommittee deal with it?

Mr Tilson: It seems to me, Mr Chair, we want to know when we're coming back. I'm suggesting we come back at 1 o'clock and that the subcommittee could deal with Mr Ramsay's concern, as Mr Marchese had agreed.

The Chair: Mr Ramsay, are you withdrawing your motion?

Mr Ramsay: Is he withdrawing his?

The Chair: No.

Mr Ramsay: Well, I'm not withdrawing mine, no.

The Chair: Okay. Since no one has their hand in the—

Mrs Caplan: I did.

The Chair: Mrs Caplan. We will not get lunch at all if we continue at this rate.

Mrs Caplan: That's fine. Look, Mr Chairman, I think there's an important issue here, and it really is how this committee functions. On behalf of our caucus, and certainly from what I've seen around the committee, there is nobody attempting to deliberately delay this legislation. We believe it can be and will be properly completed. There are some important issues here, and we have only been debating those issues that are of real importance. For you to place a motion like that suggests that somebody is attempting to delay and that there is insufficient time. That is not the case. That is unnecessarily antagonistic. This bill has not been time-allocated. If it is not completed on Thursday, the time will have to continue to do that. We have no intention to prolong this and I would suggest to the parliamentary assistant who has carriage of this that it is not necessary to antagonize this committee. If you want cooperation, you'd do much better—

Mr Tilson: Don't be so sensitive. I'm just suggesting—

Mrs Caplan: Well, let the subcommittee deal with that.

Mr Tilson: —that instead of taking an hour and a half for lunch, that we take an hour for lunch. Don't be so sensitive.

Mrs Caplan: The way to deal with that is by having the subcommittee, who normally deals with those matters, deal with it as opposed to creating a situation where you want this motion to be debated. That doesn't do well for the atmosphere of this committee—

Mr Tilson: I heard you. Neither are your comments right now.

Mrs Caplan: We're asking you if you would just withdraw your motion, then we wouldn't get into this, or else accede to the amendment that has been placed and we'll get on with it. You're suggesting something that just isn't so.

Mr Tilson: I'm not suggesting anything.

Mrs Caplan: You are.

Mr Tilson: I'm suggesting that we adjourn for lunch until 1.

Mrs Caplan: Then, Mr Tilson, what I would suggest is that if you want that to occur, you think about how to go about it in a way that is not going to make this committee antagonistic towards you. You're doing a very good job right now of making sure that this committee doesn't get lunch at all. I'm quite prepared to sit here to explain to you the fact that you're not being helpful.

Mr Tilson: I don't need any lectures from you, Mrs Caplan. Let's make that perfectly clear. Stop lecturing me.

Mrs Caplan: Mr Tilson, then I would suggest that, as parliamentary assistant who has carriage for the legislation, you consider your motions and what the effect might be on the committee and if you don't want a lecture, don't do anything that's going to provoke me.

Mr Tilson: And don't provoke me.

The Chair: Thank you, Mr Tilson and Mrs—

Mrs Caplan: Then withdraw your motion.

Mr Tilson: I'm getting ticked.

Mrs Caplan: So am I.

The Chair: We have an amendment of Mr Ramsay's on the floor. Are there no speakers to that amendment? That amendment is to adjourn at 5 o'clock. All those in favour of that amendment. Five. All those against that amendment. The amendment is defeated.

We have a motion on the floor by Mr Tilson to recess this hearing until 1 o'clock this afternoon. All those for that motion. All those against the motion. It's carried. We're recessing until 1. And the subcommittee should meet, please.

The committee recessed from 1207 to 1302.

The Chair: I call the committee to order. We were debating a motion amending schedule A of the act, shown on page 86, and our deliberations will continue. Mr Marchese, I had you down on the list.

Mrs Johns: Mr Marchese is deferring to me, I think, for a minute, if you can do that. I have a replacement motion on this. I would like to either stand down ours or withdraw ours and then put this new one in. If you could tell me the wording of that, I'd be happy to mimic it.

The Chair: You withdraw the one on the floor and then you remove the new one.

Mrs Johns: I'd like to withdraw the motion on subsection 2(1) on service-related activities of daily living and then I would like to make a motion with respect to the one that is being handed out at this particular moment. So this would be the new page, 86A, that you're getting, and it still relates to page 65 in the bill.

I move that the definition of "personal assistance service" in subsection 2(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"'Personal assistance service' means assistance with or supervision of hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation, positioning or any other routine activity of living, and includes a group of personal assistance services or a plan setting out personal assistance services to be provided to a person, but does not include anything prescribed by the regulations as not constituting a personal assistance service."

Mrs Boyd suggested that there were some things we needed to put into our amendment that would make it more plausible, so we have done that. My reasoning for the "routine activity of living" still stays the same. I appreciate the suggestion from her.

Mr Marchese: I find the new motion useful. I think it's important when the parliamentary assistants do these things, because although you were arguing earlier that if you provide a list it then makes it difficult in terms of what's excluded or not included, what you've done here is to mention some and then say "or any other routine activity of living," which I think takes care of the concerns raised by my colleague and the concerns you were raising. I find this a very useful way of dealing with people's concerns as opposed to simply saying no to them. So we appreciate your amendment.

The Chair: If there's no other discussion in regard to that, we have Mrs Johns's motion on the floor. All those in favour of the proposed amendment? All those against? The motion is carried.

We are now proceeding to a motion which is contained on page 87 of your proposed motions.

Mrs Boyd: I'd like to withdraw this motion, given the previous motion passed.

The Chair: There's no need to withdraw it, I'm advised by the clerk, simply because it has not been formally moved. We'll just go on to the next. We are now dealing with a proposed amendment on page 88.

Mrs Johns: This is on page 88, and we're dealing with page 66 in the bill.

I move that subsection 2(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following definition:

"'recipient' means a person who is to be provided with one or more personal assistance services,

"(a) in an approved charitable home for the aged, as defined in the Charitable Institutions Act,

"(b) in a home or joint home, as defined in the Homes for the Aged and Rest Homes Act,

"(c) in a nursing home, as defined in the Nursing Homes Act,

"(d) in a place prescribed by the regulations in the circumstances prescribed by the regulations,

"(e) under a program prescribed by the regulations in the circumstances prescribed by the regulations, or

"(f) by a provider prescribed by the regulations in the circumstances prescribed by the regulations."

We have changed this as a result of the many comments we heard that we should look further at part IV and expand. That's what we're doing here, allowing the capability to be open for consideration.

Mrs Boyd: I have a question. I mean, I don't know how else you'd do it. I assume this is to provide for people who are in home care or some of the residential care facilities that are unregulated, that sort of thing.

Mrs Johns: Correct.

Mrs Boyd: So in your regulations, you would be defining that in such a way as to prevent the false creation of care facilities? There's a real problem here that in terms of when things are unregulated, as Dr Lightman pointed out, particularly in situations where, at least according to the act as you have it, people might be able to run one of those facilities and also do the guardianship for property, the possibility of fraud is fairly large. So in the regulations, when you're prescribing these places and these programs and these circumstances, you'd be mindful of that, you'd be trying to prevent any of that problem from occurring?

Mrs Johns: I think that's a really important consideration. As we've talked about how we could move forward, we understand that we have to proceed very cautiously with this and we're going to have to consider every small avenue and decide how we can do that. So this is one of the areas I don't have regulations on, because we have a lot of thought process to go through with this, we have a lot of focus groups and consultations that we have to look at. We just didn't want to have to go back and open the legislation. But this won't be happening tomorrow or the next day; we have a long way to go.

1310

Mrs Boyd: Except I would hope in terms of home care, which then is the real issue, because there are so many people who are out there now living at home who

are under both treatment and routines of daily living, or whatever we're calling it, who would normally come under this act; we would want them to. I understand that's the real problem, how to be inclusive without being too regulatory. I really do appreciate the problem. So I'm not objecting to it; I'm just drawing our attention to the fact that it sounds extraordinarily wide open right now. As it appears, people could say, "My goodness, this could be virtually any place," and, "What does that mean?" I think we need to be mindful of that.

Mr Ramsay: I'd like to ask the parliamentary assistant, what is the difficulty of spelling out specifically that the recipient could be a person receiving care in their residence? Why are you leaving it so open-ended, through regulation?

Mrs Johns: I just have to ask you a question to be able to answer that question. We changed from "resident" to "recipient" as a result of the fact that the person didn't necessarily have to live somewhere.

Mr Ramsay: Exactly.

Mrs Johns: We heard a lot of people talking about different places, different facilities, if you will—and I want to use the word very loosely—

Mr Ramsay: And circumstances.

Mrs Johns: —that we should be considering so that consent would kick in and protect some people along the line in different areas. We haven't really gone through and considered all of the alternatives to that, but at this point we wanted to recognize that people had said that. As Mrs Boyd correctly points out, home care was one of the places we were eliminating. "Private facilities" was something that people suggested, and I just don't know how we would proceed forward on that at this particular point, but people are talking about it over at the ministry. There are a number of issues that were raised that we think the Advocacy Act and the Health Care Consent Act may assist, but we're unsure about how we will proceed. So that's why we've left it so open.

The Chair: Is there any further comment?

Mr Michael A. Brown (Algoma-Manitoulin): I'm having some difficulty following this. You will be changing the word "resident" to "recipient"?

Mrs Johns: Correct.

Mr Michael Brown: Are we therefore taking "resident" out of the definition?

Mrs Johns: That's in the next motion we'll be doing.

Mr Michael Brown: Okay. I should read forward then.

Mrs Johns: No, no. You can't read forward too far. I'm just stepping ahead because of the question.

Mr Michael Brown: So anywhere that it presently has the word "resident," we will now see "recipient"?

Mrs Johns: You'll hear me make a motion about 25 times this afternoon to change the wording in each specific case, because we can't do it globally. So you'll be hearing that a lot this afternoon.

Mrs Boyd: But I suppose we could come to an agreement here, as we did around the "personal care services," that we wouldn't discuss it every time.

Mrs Johns: Yes, exactly.

Mrs Caplan: That's right, because we wouldn't want to hold up Mr Tilson in any way.

The Chair: Is there any other comment? If not, shall the amendment pass? All those in favour? Any objections? That motion has carried.

Subsection 2(1), Mrs Johns once more.

Mrs Johns: We're on motion 89 on page 66 of the bill, and I'm amending subsection 2(1).

I move that the definition of "resident" in subsection 2(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out.

Mr Brown and I just talked about that.

The Chair: Shall the amendment pass? Any objections? It's carried.

Moving on to 2(1) on page 90, Mrs Johns again.

Mrs Johns: Page 90, page 66 of the bill.

I move that clause (a) of the definition of "treatment" in subsection 2(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "plan" in the fourth line and substituting "service."

We've talked about that already. This is a consequential amendment.

The Chair: Shall the amendment pass? Any objections? Carried.

Mrs Boyd has a motion on page 91, I believe. Please proceed, Mrs Boyd.

Mrs Boyd: I move that the definition of "treatment" in subsection 2(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out the portion before clause (a) and substituting the following:

"'treatment' means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes any controlled act within the meaning of section 27 of the Regulated Health Professions Act, 1991, a course of treatment or a plan of treatment, but does not include,"

That's the end of the motion. The purpose for that is to ensure that we clearly are tying controlled acts under the Regulated Health Professions Act to treatment, that anything that is a treatment is in fact a controlled act. That would deal with some of the issues that arose from various of the deputants around what was a treatment and what was not.

Some of us were rather concerned, for example, when the dental people came forward and were trying to suggest that some of the dental treatments that are controlled acts under their act were routines of daily living as opposed to treatment, and in fact we don't believe that's the case. That's just one example.

The issue that was raised most often was the issue around restraint and how that issue applies if it's not under the controlled acts under the RHPA. So that's the gist of our amendment.

Mrs Johns: I had some trouble with this amendment, so I went to section 27 of the RHPA to see what it said. Just for members who may not know, it talks about, "No person shall perform a controlled act set out in subsection (2) in the course of providing health care...to an individual unless, (a) the person is a member authorized by a health profession act...." or the person delegates to someone else, ie, a doctor delegating to a nurse. You correct me if I get any of these wrong.

Then it talks about a controlled act and it goes through what they define as controlled acts. They talk about communicating to an individual or his or her personal representative a diagnosis; it talks about performing a procedure on tissue below the dermis; it talks about setting or casting a fracture; it talks about moving the joints of the spine; administering a substance by injection; putting an instrument, hand or finger into an ear canal, and then it goes on to other ones, nasal passages. Then it goes on to some of them that become more complex for me to understand: applying or ordering the application of a form; prescribing, dispensing, selling; eye care problems.

So I tried to think about that with respect to our treatment. One of the things in our treatment evaluation that we were trying to come up with was the difference between a treatment that was high risk, that we needed to set out as being something that needed consent to, and low-risk items. As I went back to this section, some of those things seemed pretty low risk to me. I guess they could move depending on the person and the analysis but, for example, removing ear wax from someone seemed fairly low risk to me. I felt that probably wasn't what the intent of the act was to do, to tie consent to some of those issues. I may misunderstand, but I don't think tying the controlled acts into this is something we would have wanted to have happen with treatments being ranked by high and low risk.

Mrs Caplan: I wasn't going to speak to it, but given your explanation, I think we need a little additional clarification, because in fact the list that you read out under the Regulated Health Professions Act are the risks which are considered harmful. Anything that is harmful is a controlled act under the regulated health professions legislation. Anything that is not a controlled act can be performed by anyone and it is not considered a risk of harm.

I want to be helpful here. Frankly, the concern that I have with the legislation is not the phrase that's in your legislation, and I don't think the amendment as put, as well-meaning as it is, is necessary. The concern that I have is around the low-risk treatments which are excluded, and we have an amendment later on for how to deal with that. But I think your explanation's a little confusing to people who are watching because under your definition of "treatment" it should capture everything that is harmful and it should capture everything that's in the regulated health professions legislation already. So I really see the NDP amendment as being redundant. That's why I'm not going to support it.

1320

Mrs Boyd: If indeed it is redundant, that's one thing, but this issue of high risk/low risk is of real concern to us. We believed that this was the way to define those two things. It is not my belief necessarily that the removal of earwax is a low-risk issue. People's eardrums can be damaged in that process. That's why it's—

Mrs Caplan: In fact, it is a high-risk procedure. It's listed under the controlled acts. If I can have the floor for a minute, that's why I clarified, because I think that Mrs Johns's example wasn't the best example.

Mrs Boyd: What we were trying to say was anything that does convey risk ought to be considered treatment in that same way, and that comes down to that fundamental

disagreement about whether you just allow things to happen to people without their consenting to it because some health professional decides it's a low risk. You say you want flexibility in that. Well, quite frankly, to hear people talk about aversive shock therapy, it's low risk. Quite seriously, it depends on the health professional and what they're trying to convey as high or low risk. And it's the very flexibility and the lack of certainty about what could happen to someone without their consenting to it that is our concern.

Mrs Caplan: To be fair, I think if we're going to have the debate, we should deal with items that are considered by the legislation. For example, the use of shock therapy is not covered by the Regulated Health Professions Act and it is a very different and separate example from the kind of normal treatment that would be provided. So just as I don't think Mrs Johns's example was a good one, I don't think that example is helpful to the debate here.

It's my view from reading the act that in fact all of the high-risk procedures are covered in their definition of treatment. They're doubly covered because they are licensed and controlled acts under the Regulated Health Professions Act. Where the debate comes in, Mrs Boyd, is around the issue of low-risk stuff, and I do think there have to be some changes and I don't think the government's amendment when we get to it actually solves the problem. We will have an alternative that I hope the government will consider, because I think that is the real issue: How do you make sure that people don't have something imposed on them that someone feels is low risk which in fact they object to?

Mrs Boyd: I wonder if we could have an opinion from the Health ministry lawyer as to whether or not it is redundant or whether everything that is considered as a controlled act would fall under the definition as presented by the government.

Ms Perun: The definition of "treatment" is actually quite broad and it would include the kinds of things that are listed in subsection 27(1) of the RHPA; that is, the 13 controlled acts. The other problem that I saw with respect to just saying "section 27 of the RHPA" is section 27 not only includes the controlled acts but also includes exemptions to the controlled acts, what is left in the public domain. For example, a controlled act—really, all it means is that it's somewhat risky or dangerous if it's done by someone who is not qualified to do so or is not authorized. But if you're authorized, then you're authorized to do one of the acts.

The exemptions to the controlled acts are such things as first aid or rendering treatment to your son or daughter, for example: insulin shots, that kind of thing. That's out in the public domain, so basically having section 27 entirely is somewhat confusing as well. So that had to be considered. But I don't think those words are really necessary because the actual preamble—"treatment" is all of this "but does not include"—is actually quite broad.

Mrs Boyd: If we have the assurance, Mr Chair, that it is included, we will withdraw the amendment.

The Chair: Was that your opinion?

Ms Perun: That's my interpretation.

The Chair: That is the proposed amendment on page 91, which in effect we will not deal with.

Mrs Boyd: Mr Chair, I move that section 2 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsection:

"Treatment

"(1.1) Clauses (a) to (h) of the definition of 'treatment' in subsection 1(1) do not apply to any controlled act within the meaning of section 27 of the Regulated Health Professions Act, 1991."

It seems to me that in spite of our withdrawal of the previous one, that in fact just reaffirms what you said. I would like to add, Mr Chair, that the counsel's explanation of the exemptions, and section 27 being too broad because it includes the exemptions—we would want the exemptions included. You gave the example of giving an insulin shot. We would want that insulin shot to be able to be given, I guess exactly in the sense—so we did mean all of section 27. We did mean the exemptions as well as the controlled acts.

The Chair: Mrs Johns, do you have any comment?

Mrs Johns: I have some comment on this, yes. The definition of "controlled act" in the RHPA applies to things that only certain regulated health practitioners are authorized to do, because those health practitioners have training in those specific areas. However, not every controlled act performed by a practitioner who is authorized to do it is a risky act; for example, removing warts, earwax, that kind of thing, taking blood samples. The motion defeats the purpose of giving flexibility to the legislation which the exemption to the definition of "treatment" accomplishes.

The Chair: Is there any other comment in regard to the proposed amendment? If not, shall the amendment made by Mrs Boyd pass? All those in favour? Two. All those opposed? The motion is defeated.

We are going over to a new section of schedule A, section 2.1, on page 93.

Mrs Johns: Page 93, and we're still on page 66.

The Chair: Excuse me, Mrs Johns. The clerk rightly points out that we have not passed section 2, as amended, and I would therefore ask you whether we shall pass section 2 of schedule A, as now amended. All those in favour? Is there any opposition? None? Carried.

Now we're on to the new section of schedule A, 2.1. It's an addition.

Mrs Johns: I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"Meaning of 'excluded act'

"2.1(1) In this section,

"'excluded act' means,

"(a) anything described in clause (b) or (g) of the definition of 'treatment,' or

"(b) anything described in clause (h) of the definition of 'treatment' and prescribed by the regulations as an excluded act.

"Excluded act considered treatment

"(2) If a health practitioner decides to proceed as if an excluded act were a treatment for the purpose of this act, this act and the regulations apply as if the excluded act were a treatment within the meaning of this act."

Mrs Boyd: Do you understand what it means?

Mrs Johns: Yes, I do.

Mrs Boyd: Would you like to share it with us?

Mrs Johns: With respect to this (2) at the bottom, "Excluded act considered treatment," we heard a number of people who talked about wanting to opt into the process; in other words, if it wasn't included in the treatment, that a health practitioner would be allowed to opt in and get consent. We heard that from a number of people, from the Ontario Medical Association and Linda Bohnen. That's what we're doing in this case. This amendment permits a health practitioner to seek clear legal consent for the substitute decision-making rather than in accordance with the HCCA low-risk treatment, so we're responding to one of the recommendations we had heard during the period.

With respect to this amendment, there is no simple way to obtain clear legal consent on behalf of the incapable person with respect to low-risk treatments, and so we're trying to implement that into this section.

1330

The Chair: Any comment, Mrs Caplan?

Mrs Caplan: Actually, you probably could call this the Bohnen amendment.

Mrs Johns: Yes, thank you.

Mrs Caplan: She was the one who brought this forward and I think it has probably satisfied her concern about the ability to opt into the act. Apparently the difficulty with it, although there are some other places farther on where there will be some protections as well for individuals who are required—I think it is good to be able to opt into the act to obtain consent for something that is considered low risk. I just think that that's good practice and that she made a very valid point before the committee that it should be addressed. I'm pleased to support this amendment.

The Chair: Any other comments? If not, shall the addition of 2.1 to schedule A pass?

All those in favour? Any against? Passed.

We're dealing with section 3 of schedule A and, Mrs Johns, there's an amendment of 3(1), which is on page 94, I assume, of the proposed amendments.

Mrs Johns: I move that subsection 3(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "plan" in the third line and in the sixth line and substituting in each case "service."

The Chair: Is any comment required in regard to that motion. Shall the amendment pass? Any opposed? Carried.

Subsection 3(2) on page 95.

Mrs Johns: I move that subsection 3(2) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "a personal assistance plan" in the last line and substituting "personal assistance services."

The Chair: Any comment? Shall 3(2) of schedule A pass? Any opposed? Carried.

Subsection 3(3), Mrs Johns.

Mrs Johns: I move that subsection 3(3) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "plan" in the sixth line and substituting "service."

The Chair: Any comment? Shall this amendment pass? Carried.

Shall section 3, as amended, carry? Any opposition? Carried.

Shall section 4 carry? Any opposition? Carried.

Section 5 of schedule A, Mrs Caplan has an amendment.

Mrs Caplan: I move that section 30 of the bill be amended by adding the following subsection:

"5.1 Section 46 of the act is amended by adding the following subsection:

"Same, research

"(8.1) The power of attorney may authorize the attorney to request or consent to a procedure whose primary purpose is research."

Speaking to that—

Mrs Johns: On a point of order, Mr Chair: I don't have that motion. Is that distributed? Do I have it?

Mrs Caplan: It should be there. I'm happy to stand it down till you get a chance to look at it.

Mrs Johns: Could we do that, please.

Mrs Caplan: Would you like me to tell you the intent of it?

Mrs Johns: Would you mind?

Mrs Caplan: As of now, no one can consent on behalf of anyone else to research, to a treatment for research purposes or to a procedure which is part of research. That's both common law and there's nothing in statute that permits it. The intent of this—

The Chair: Excuse me, Mrs Caplan. What was it numbered?

Mrs Caplan: It's a new one, so it would be numbered 96(a).

The Chair: That's not the same as was distributed to us, I don't believe.

Mrs Caplan: Oh, right. My error, Mr Chairman. I read one that is section 31 as opposed to the schedule A one. I'd like to re-read it if I can. That's probably why you couldn't find it. I'm sorry. I do apologize.

Schedule A to the bill (subsection 5(1) of the Health Care Consent Act, 1995)

I move that section 5 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsection:

"Exception, research

"(2) Despite subsection (1) this act applies to giving or refusing consent to a procedure whose primary purpose is research if the person on whose behalf the consent is to be given or refused has given a power of attorney for personal care that authorizes the attorney to request or consent to the procedure."

The intent of this is to put in statute the ability for an individual in a power of attorney to consent to research on their behalf. At the present time there's no ability for anybody to do that, and it would be my hope that when the Attorney General prints the new kit, you would actually have a line in there that would allow people to think about whether or not they'd like to participate in a research study.

For example, someone suffering from Alzheimer's, where we know very little about that disease, might say in advance: "Should I ever get Alzheimer's, I would be

willing to be part of a research study. I give my attorney the authority on my behalf to make that consent."

Unless it's in the statute, they have no ability to consent on behalf of the incapable person. This would just put in place something which I think is missing from the statute which the common law does not permit, and I think it's something people should start thinking about because we all benefit from the research that is done, but we wouldn't want it done without our approval and consent, and now there's no way of obtaining that consent.

That's the intention of this amendment. If you can support it, fine. If you want to stand it down and think about it, I'd be happy. I just wanted you to know what the intent was.

Mrs Johns: I'd like to stand it down so we can look at the legal implications with respect to this, if you don't mind, and we'll bring it up again once we have it looked at by legal counsel.

The Chair: Is there unanimous consent to that? No opposition? Let's proceed then. Section 5 and the proposed amendment 5(1) will be stood down and we'll proceed to section 6.

There are no amendments proposed for section 6, I believe. Shall this section pass? All those in favour? Opposed? None. Carried.

Section 7, schedule A, there is an amendment proposed for 7(1). What page of the proposed amendments is that?

Mrs Johns: It's 97.

The Chair: Could you proceed, please.

Mrs Johns: I move that section 7 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Application of part

"7(1) Subject to section 2.1, this part applies to treatment.

"Law not affected

"(2) Subject to section 2.1, this part does not affect the law relating to giving or refusing consent to anything not included in the definition of 'treatment' in subsection 2(1)."

Basically what we have done is change section 7 to take into effect the amendment we made earlier with respect to excluded acts in 2.1.

The Chair: Is there any comment? If not, shall the amendment pass? All those in favour? Opposed, if any? That's carried.

Shall section 7, as amended, pass? All those in favour? Any opposition? Carried.

We're proceeding to section 8, and there are no amendments I'm aware of for section 8. Shall section 8 pass? All those in favour? Opposed, if any? None. Carried.

Section 9 in our deliberations: We have a proposed amendment to subsections 9(3) and (4). Mrs Caplan.

1340

Mrs Caplan: There's a replacement motion that I'm going to read.

Schedule A to the bill (subsections 9(3) and 9(4) of the Health Care Consent Act, 1995)

I move that section 9 of schedule A to the bill be amended by adding the following subsections:

"Exception

"(3) A health practitioner who proposes to treat a person with electric shock as aversive conditioning shall not administer the treatment without the permission of the board.

"Same

"(4) Subsection (3) does not apply with respect to treatment in a facility which provides residential treatment to mentally or physically disabled persons under the authority of an act administered by the Ministry of Community and Social Services."

The intention of this is to deal with the lifting of the ban. I've said all along, and we've had representations, that I believe the ban was not a good idea because it did not allow for the rare exception. That's the Singer case, which we were talking about.

However, we also heard before this committee others who said that the lifting of this ban would allow this supposed treatment—"procedure" is the right word—to be done in an individual's office. What this says is that if it's in a Comsoc facility where they have the regulations, where they have the procedures and safeguards to make sure that the use is a last resort and is appropriate to the conditioning, you could not have a situation whereby somebody was taken on an outing from a Comsoc facility and taken to an office where this could be administered without the consent—or without the permission; I want to use the correct words—without the permission of the Consent and Capacity Board.

What it effectively does is maintain control outside of a Comsoc facility. I think that is important to do, because we did hear from those who said they provide or would provide or consider providing or it could be provided outside of a Comsoc facility. As rare as that might be, we don't want to see the proliferation of such controversial procedures without accountability. That accountability would be getting permission from the Consent and Capacity Board.

I hope the government will support this, because the issue is a very divisive one and we heard representations from those who said, "Continue the ban," and those who said, "It's okay to remove the ban because Comsoc facilities are controlled." The concern I have, and it was confirmed, is that because of the nature of this device, it is available and could be used in a practitioner's office. It is sometimes used on capable people, and that is their choice, but this would say that when it came to someone who was incapable, it could not be administered without approval from the Consent and Capacity Board. I think an approval from the Consent and Capacity Board is a reasonable safeguard in a society that considers this controversial.

Mrs Boyd: We have a different amendment under the section where electric shock as aversive conditioning is actually dealt with, and in our amendment we really did believe that an application to the court was the appropriate thing. Very often, an application to the board might mean a review in court in any case, so we felt it should go to a court immediately. But we could probably live with the suggestion in subsection 9(3), as suggested by the Liberals, that it go to the capacity board as an alter-

native. I cannot live with subsection 9(4), and I cannot live with subsection 9(4) because although there are lots of safeguards in place in terms of Comsoc facilities at the present time, there is no guarantee that those would always remain in place.

There has been a large controversy around the extent to which this kind of treatment ought to be used in a government-regulated facility in any case and there is clearly great disagreement between the advocates on behalf of the vulnerable and those who are advocates on behalf of this particular type of treatment.

There are many, many kinds of treatment that those offering that treatment will hold out as the only solution to specific problems. That certainly was true with the insulin therapy stuff that went on. It was certainly true of some of the drug trials, the LSD trials that we know went on in mental facilities before, and those went on in hospitals that were funded by government.

I would be very unhappy if in fact in a bill which saves people from being liable, we simply gave a blanket permission that mentally or physically disabled people who are under the authority of an act administered by a particular government ministry could have this kind of a treatment without any issue around consent. I think that is a very serious issue and would not be in the best interests of a lot of people.

We saw very vigorous lobbying. We saw what I think is quite unprecedented, frankly, American citizens being allowed to speak to our committee about what our law ought to be, without being invited by the committee itself, trying to advocate on behalf of this particular treatment. This is a very strong lobby that this particular kind of treatment has developed among those who have used it, and I think it is really incumbent upon us to be very clear that the reason this is controversial, the reason it is not funded or allowed in the state of Michigan and most other states is because it is so highly controversial. To do what the government has done in its original bill, which is a blanket permission to use this therapy anywhere with no controls, is unconscionable. But quite frankly, to just allow it to happen in any Comsoc facility, I believe is equally unconscionable.

Mrs Caplan: What I'm going to propose, as well as the explanation, I'm satisfied that there is political accountability for the Ministry of Community and Social Services and that the minister stands accountable for what happens in those facilities, and I'm therefore prepared to exempt the Comsoc facilities from the legislation and the requirement to go to the consent board for permission. But to accommodate Mrs Boyd and hopefully to have the support of the government members for the purpose of voting, if we could split them, so that we can have 9(3) and (4) voted on separately, hopefully we will then accommodate your desire.

The Chair: Is there unanimous consent to splitting the vote? That's all I'm asking right now. No objection?

Mrs Johns: I'd like to speak to this issue. The government will be opposed to this amendment to the act. What has happened over the last three to four weeks is that we have heard compelling information on both sides of the issue. We've heard from the Singers and two families from Michigan. Their plight has I think affected us all

who have listened to their stories. On the other side we've heard people talk about different reasons that they believe that it is not true, that the treatment isn't necessary.

We have listened to discussions about aversive and non-aversive behaviour treatments and we've heard some very radical ideas about what really happens with faradaic stimulation. Mr Parker—I wanted to get the Hansard on a specific person who came before the board, and he asked, "What does faradaic stimulation really mean?" and this person was talking about what happened many years ago with cattle prods and different issues and different ways it was done. Then we heard Mrs Singer talk about what it felt like, what it meant to Brian's life, how different it was.

For the people who are listening here and who may not have heard those presentations, I think the thing that moved me the most, having young children, was the fact that these children are causing themselves bodily harm. In one case the person was hitting themselves 5,500 times in a day, to the point where their ears were damaged, their eardrums were damaged, and the alternative for Brian Singer prior to this treatment was that he was in a straitjacket all the time and his alternative was that he took drugs.

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So from our standpoint, we have listened. We've tried to assess the story. We believe that it's not a procedure—I think is the word Mrs Caplan used—that should be used daily, that should be used for everyone around the block. I don't think people are lining up for this procedure, but I think that there are sufficient things that people have to go through in this time to be able to get on the treatment.

We heard Mrs Singer talk about all of the different alternatives that they tried before they put Brian on this treatment. We heard from the woman in Windsor, who I was really touched by, who talked about the procedure of sitting and hugging her daughter for four hours a day, and they thought that that may cause bonding and it may stop her from being self-destructive, and it didn't work. They found that as they went through the different treatments, this was the only way they could go.

This government has thought about this, and what we believe is true is that we have to have some sort of a mechanism that makes sure that this is a last resort, not a first resort. We are very cautious about the people who can consent to doing this. We believe that we need to have regulations that allow us to take control.

We have a draft regulation here today that I would like to get copies of and pass out to you. I want to remind you it's only a draft regulation that we've been working on, and we believe that this will allow the people who need to have the treatment get the treatment after a lot of other alternatives have been exhausted, and at the same time they don't have to go through the court hearings after everything else that these families have been through.

So we will be opposing both amendments that have been put forward, and I will be happy to give you this draft regulation. I'm sure it will need some work, but this is the first draft to what we are considering at this time.

Mrs Caplan: I'd just like to suggest, Mrs Johns, that perhaps you don't fully understand the intent of the amendment. It's not in any way to restrict access to the treatment by someone in a Comsoc facility, such as the Singers. I think that to suggest that is wrong. This very clearly says in a Comsoc facility where they have the procedures in place and the decisions can be made, so be it, and the minister stands accountable for those facilities, and that's fine.

The concern we have is that this legislation as it stands right now places no restriction on the use of this procedure. We're not suggesting that you go to a court. We're talking now about when it is applied to someone who is incompetent and unable to consent to this treatment. We're saying that before a substitute decision-maker or a guardian can consent to the use of this treatment, or therapy, or procedure, or whatever you want to call it, they have to get approval from the Consent and Capacity Board—

Mrs Johns: I understand that.

Mrs Caplan: —which is a very informal process. It's not a court. It's not lengthy and it's not costly. It's a very simple procedure, but you'd have to make the case for this being the last resort. The concern that we have is that the procedure outside of a Comsoc facility is unregulated, and doing it by regulation is hard to enforce.

If it says in the law that you cannot provide this procedure unless it's in a Comsoc facility or unless you have the approval of the Consent and Capacity Board, you are protecting vulnerable people, if that is clear and that is in place and that is the law. If you do it in any other way, in our view, you are reducing the protection of the vulnerable person. We think it should be clear in the law that says only in a Comsoc facility where you have ministerial accountability or only with the approval or the permission is the correct word of a Consent and Capacity Board that has reviewed the evidence and determined that outside the Comsoc facility that treatment will be acceptable.

I heard your impassioned plea and your discussions of what happened here. No one is suggesting that someone who is self-abusive and for whom the treatment is a last resort and is considered appropriate—we certainly are not suggesting they shouldn't have access to it.

What we want to make sure is that it is only in a Comsoc facility where the minister and the government are accountable for the procedures in that facility, and that if it is outside that facility in a psychologist's or a doctor's or a whoever knows who else's office—because this is not a licensed act under the health regulations act. This is not a licensed act. I made that point earlier. If it's in some other place that this is taking place, where this is being applied to an incompetent person, it will be illegal unless they have permission of the Consent and Capacity Board. That's all this is.

I think in your argument about why the government wasn't going to support it, you missed the point, that this is just protection for vulnerable persons. I don't understand what your objection would be to having it made very clear in the statute that this procedure can only be done to people who are unable to decide for themselves,

unless they're in a Comsoc facility or unless there's permission from the board. Those are safeguards.

Mrs Johns: Brian will never be able to come out of that home. He'll never be able to go to a group home or to do anything else outside—

Mrs Caplan: The Consent and Capacity Board could say yes. They would have that permission.

Mrs Boyd: Sure.

Mrs Caplan: Absolutely. He could. Whoever's told you he couldn't—

Mrs Johns: But he's gone through all the processes.

Mrs Caplan: No, no, no. As long as he's in the Comsoc facility, he can have that treatment. When he's able to be moved to a group home, the Consent and Capacity Board can agree and give permission for the treatment, and that could be done in 24 hours. This is not a court proceeding. It is not expensive. If they've told you that there's a problem, there's no problem. He and anyone else—and that's the concern—who moves into a group home, there's no accountability. This can happen in group homes anywhere in the province, and that's exactly the issue. At least somebody should be monitoring it and having to give permission and holding accountable what's going on.

Think about this very carefully. It's protection for vulnerable people outside of a Comsoc facility. How can you possibly object to them having to have permission before they do this in a group home? Just get permission; then they can be moved. No one's saying that you can't do it. Just add a little protection for those vulnerable persons. That's the only request.

Mr Marchese: I support the arguments that have been made by my colleagues on this side. We pointed out that our own bill initially was extreme and it didn't allow for the flexibility. Our concern is that you not go the other way to the other extreme. What we're supporting on this side is that safeguard that I would think you would be supporting but I'm not quite sure why you're not, so it's concerning me.

The case you brought forth about Mrs Singer, we were all pained by it, especially she as the mother of that child. We understood that. That's why we said that our own bill made it very complicated for her and that we needed therefore the flexibility to allow that. On the other hand, we were not just informed about this case by Mrs Singer, but we were informed by others who called this cattle prods, and I know some of you took offence to it. On the other hand, many of us say that those people who experienced that were offended by it so much that they referred to it as cattle prods because that's the kind of influence it had on them personally. I know you might shake your head, but we haven't been through that. I don't want to go through it myself, to experience it to determine whether that's a cattle prod or some nice, gentle little shock one gets. I don't want to experience that. The point is that many of the people who have gone through it find it particularly offensive, so much so as to label it something you find unpleasant. You've got to listen to what people tell you.

1400

We've listened to Mrs Singer. We say, "We understand that; we want to correct it." We listened to many others

who said: "It's a problem. It's dangerous. We don't like it. Give us some protection." The point of this particular suggestion, and we make our own, where there are higher degrees of safeguards is to say that we want it to go ahead but under certain conditions. My colleague Mrs Boyd talked about why she is concerned about number (4) as well, because we're concerned about that. Wherever it's happening, there has to be a high level of safeguards to protect individuals from something they find terribly wrong.

This motion, part (3), gives you the protection, Mrs Singer the protection and people like her the protection through the board. Let me understand, and when you respond you might correct me if I'm wrong: Are you perhaps thinking that the board may not allow it? Our suggestion is that once it gets to the board it won't take very long; that if you have a case like Mrs Singer, the board will say, "Let's go ahead." I don't see the board denying that particular case; I see the board supporting it. But it allows a board to hear evidence in the matter and then say, "We think this is good" or "We think it's bad." Where they see fit in their reasoning that something can be allowed, they will allow it, and we trust that. Where they think it's not something they could allow, it gives protections to those people who find this offensive.

I'm not quite understanding why you, as a government, are objecting to this particular piece, because it gives you the flexibility to protect people like Mrs Singer and it gives the others the protection from this particular kind of treatment that frightens them very much.

Mr Tilson: I have a question for Mrs Caplan on the intent of her motion. I know you've given your intent, but just so I'm clear. Faradaic stimulation is not prohibited anywhere in Canada other than the province of Ontario currently, as I understand it. Is that agreed? Ontario is the only place currently where faradaic stimulation is prohibited.

Mrs Caplan: A total ban.

Mr Tilson: A total ban. My understanding is that treatment of this process by regulated health practitioners, who are accountable through their colleges—that's the process, that the colleges put forward their own regulations as to how or why or in what way this process is to be completed.

The philosophy of our government, at least, on a great many things is to enable the colleges to take a more independent role. Certainly the minister, in his or her discretion, can make pretty strong suggestions as to guidelines and other procedures that should be followed in various processes, but the intent of our government and, I seem to recall, the intent of the Liberal government as well was to place a great deal of importance on the independence of these colleges. That's what we're suggesting, that process, that the control of this type of treatment be left with the college.

You're saying, just so I'm clear on your intent, "No, we want it to go further." With the exception of a facility administered by Comsoc, we say: "No, that's not enough. We want you to go to the board." Is that the intent of your amendment?

Mrs Caplan: Actually, as you've explained it, it's not accurate, because faradaic stimulation and electric shock

therapy—and I'm not talking about electric shock therapy of other types. The type of electric shock we're discussing as faradaic stimulation is not a controlled act, is not a licensed act.

Mr Tilson: Yes, and currently it's only done in the one institution.

Mrs Boyd: But it's not a controlled act.

Mr Tilson: I understand that.

Mrs Caplan: But this is the point. You said, and I think your language was very good, that under the Regulated Health Professions Act is where it should be controlled. It's not controlled under that act. It is not a licensed act, it is not a controlled act, it is not given only to certain professionals to be able to use that tool.

Mr Tilson: You're a former Health minister and I'll acknowledge that you know more terminology than I do, but my understanding is that this is a means of clinical practice, and the colleges control clinical practice.

Mrs Caplan: No, and that's the problem. The problem is that this act is not controlled by any of the colleges and that while it is part of the clinical practice of one of the professions, namely, psychology, it is not licensed only to psychology, and therefore it is not controlled by that college. That's the problem. That is an option to consider, but that's not what you have today. When you're saying leave it to the colleges to control—this particular therapy treatment procedure is so controversial that there are states in the United States that say if you choose this, you receive no state funding or access to state-funded programs.

There's a lot we need to know about this. Given that there is no regulation, that it's not a licensed act given to any one profession—and even if it were a licensed act given to one profession, I would still have a concern about its use on incompetent people outside of Comsoc facilities. That's the answer to your question. I do have concerns, because the recourse in that situation would require a complaint to the college and that procedure, and I don't think that protects vulnerable persons adequately enough. While I agree with you and support the thrust of your government that you want to let the colleges wherever possible set the standards of practice, you have a dual obligation as well, and that is to the vulnerable people in this province.

The people who would receive faradaic stimulation are among the most vulnerable: the self-abusive. They are likely under a guardianship plan or agreement, and certainly most are in Comsoc facilities. But there is always the possibility—and I raised this at committee and unfortunately you weren't here. I asked a psychologist if it would be possible for a patient, a resident in a Comsoc facility, to be picked up and taken out for an afternoon outing and taken to an office of a psychologist where this therapy would be administered. Would that be possible under this legislation? The answer was yes. So this is intended to say, whenever it's outside a Comsoc facility, you're protecting the vulnerable person by making sure somebody gives permission to what is a very highly controversial procedure. That's what it is.

Mr Tilson: Continuing with my question, it has to do with the draft regulations that I believe have now been

distributed. I'm wondering if the Chair would allow Mrs Johns rather than me to explain these regulations.

Mrs Johns: Everybody's probably read them. Basically, what the regulation is doing is tying it to people who are with the College of Physicians and Surgeons and people associated with the College of Psychologists. I wanted to draw that to the attention, that we have narrowed it down here; that was something I wanted to add to the discussion, and I think that was something you didn't recognize. Legal counsel wants to add something? We've also tabled a letter, they'd like us to tell you, about the contents of this.

1410

Mrs Boyd: I'm not unhappy about the fact that you might bring this under the regulated health professions, although the way you're doing it is to give permission for aversive therapy as opposed to requiring them to change the current thing for incapable people. If they're so ethical and so on, why wasn't this under their college in the first place?

This is a big issue. You talk about Mrs Singer, and Mrs Singer and those other parents, yes, they presented a point of view, but you don't talk about all the other people who really presented a very different point of view and who really saw that to allow this to happen to incapable people and, under your act, allow it to happen anywhere and in a completely unregulated way, because these regulations don't exist yet, is running completely counter. Let's look at some of the people: the Toronto Mayor's Committee on Aging, the Legal Assistants of Windsor, the Advocacy Centre for the Elderly, the Family Mental Health Alliance, the Adult Protective Services Association, and not least, of course, the Ontario Association for Community Living.

The Ontario Association for Community Living has a resolution on its books saying aversive therapy should not be used at all. They were prepared to come here and say, as were these other groups: "We appreciate the enormity of what has happened under the ban for an individual in this province, and that was never the intention. But if this is going to be used, it ought to be used under some controls. It shouldn't just be able to be used."

What we all heard was a series of psychologists and others come in front of us saying that this would be useful for "many" children, and they kept saying it again and again. They would say, "Oh, it won't be used very often," and then they would say, "But many children would benefit." And so did the parents who came in front of us, except for Mrs Singer. Mrs Singer did not. But the parents who came in front of us in Windsor said in part of their presentation, "This will only be necessary in maybe one, maybe two cases in your province." But at the end of their presentations, they all said, "And this would be valuable in the case of hundreds of children."

One of the things we have to recognize is that if this is not regulated and strictly controlled, its use will grow. However it works—and even those who were very strong advocates said they don't know why it works or how it works and why it doesn't work on some people who show exactly the same symptomatology as Brian. It worked with Brian; it didn't work with six others that we know of. They don't know why it works, but the problem

is that when you get this kind of thing, people use it to see if it works.

Everybody talks about what confidence they have in the facilities under the Ministry of Community and Social Services. Having been a Minister of Community and Social Services and trying to make sure that in fact this was not an expanding program, my experience is that those who want to use this see this as an expanding program. They talk about it as useful for controlling the behaviour—which is what this is all about—of many more than just the few people that are there.

It is really important for you to understand that although nobody here wants to see the kind of situation where it's absolutely not allowed—and I think we all have come to that conclusion; certainly we have—we would say it needs to be much more strictly controlled when you're doing it for people who are incapable.

Personally, some of the things we heard about its widespread use with capable people give me pause, but as long as it does come under the regulated health professions in a full way—not just for incapable people, but regulated under the regulated health professions, period—I could probably be more comfortable with that. Certainly my discussion with Mrs Singer indicated that going through that procedure would be nothing compared with what she has already gone through just to get the consent of the board or a court. I don't understand why the government is refusing to consider that as a possibility for incapable people. The protection of incapable people is extremely important.

We have seen facilities for the developmentally delayed and facilities for the mentally ill in this country give many, many treatments that the physicians involved said they thought would be effective. We had a case in front of the College of Physicians and Surgeons just last year where a person was complaining to the college about physically abusive and sexually abusive behaviour and many doctors said, "Oh well, that was just one of those treatments we tried then, and it was an effective treatment or we thought it was an effective treatment at the time and it shouldn't be the ground for a complaint."

I don't think, when we know this much about this sort of thing, that any government wants to put itself in the position where they are opening the door wide to this kind of treatment that is highly controversial. We may be the only jurisdiction that bans it, but I can assure you Mrs Singer didn't tell you she could go to Winnipeg or Halifax or Vancouver to get it because it isn't offered and it isn't paid for in other states.

This is a very big issue in the treatment community as to whether this ought to be allowed at all, and if it is allowed, under what circumstances and under what controls. I find it quite puzzling that the government is not prepared to say, "Yes, there should be some controls on it," and consider either the capacity board or a court to be the appropriate place where that case is taken.

Mr Ramsay: Mrs Johns, I'd really like to plead with you this afternoon to bring some control here. I think before we had these hearings we all had various opinions about faradaic stimulation, and the stories we've heard throughout the last few weeks, especially Brian Singer's story as told by his mother, the people that had come

from Michigan, I think touched us all. As you've just witnessed from members of this committee that belonged to the previous government, many of whom were extremely against this, all of us have been moved by this and understand the need. However repugnant we might find this treatment, we understand the need that in some cases this type of treatment is required, and I think there's fair agreement around this table about that.

Our concern is that you offer control for those people who are deemed to be incapable—some protection. That's all we're asking. If you take the range of people in Ontario who require psychiatric and psychological services, only a very small number of those people would fit into the category that might benefit, as a last resort, from this type of treatment, and a very small number of those within that group would be found to be incapable.

If we afford protections for those people who find themselves in a Comsoc facility because of the procedures that are in place, I don't see why we're not affording the same protection to others. An example would be that under your regulation here a physician or a psychologist could make a house call and could deliver this treatment at somebody's residence, for instance.

I think you're really opening the door potentially for some abuse, and I don't know why you would not at least, since we've fairly well agreed here that this can be appropriate treatment at some point, put some protection there for vulnerable people. You're talking to people now who aren't totally adverse to this treatment, but we still feel that the yellow light should be there, the caution light at least should be there, that, yes, we agree that this treatment in some cases is appropriate, but we feel there should be some safeguards and they should be applied evenly to incapable people wherever they find themselves.

1420

Mrs Caplan: The question I have is—do I read this correctly, Mrs Johns?—would this regulation permit a doctor or a psychologist to provide this treatment in their office or in the privacy of someone's home, as Mr Ramsay described, on a house call? Would that be permitted by your regulation?

Mrs Johns: Yes.

Mrs Caplan: And do you think that's acceptable?

Mrs Johns: I believe that this is a treatment. It's established by two colleges, the College of Psychologists and the College of Physicians and Surgeons, and although it's different from other treatments, it has the same evaluation as treatment. These people go through different processes to get to it. It's not the first kind of treatment we offer them, but it is a treatment and it will be set up in guidelines that we have set through our regulation here.

It will allow people to be protected. We don't talk about any other kind of treatment throughout this whole act. We say that the doctor or the health practitioner decides on what the appropriate treatment is and, all of a sudden, on this side you're saying, "I'll let them decide on every treatment except that one." We're saying that we have to have faith in the health practitioner. We're asking for guidelines, we're setting out regulations, and

we believe we are monitoring them and we are protecting the vulnerable.

Mrs Caplan: I think it's good that you've decided it's a treatment, but what we heard from all of the organizations and associations that Mrs Boyd listed, and I'm not going to repeat them, is that it is hugely controversial as to whether this is a treatment or a therapy or a procedure. There is no consensus here in Ontario, there's no consensus across Canada, there's no consensus in North America, there's no consensus around the world.

There's no place where you could point to and say that has been agreed upon, that this is under the following circumstances, so I think you are taking a huge leap of faith, and also, frankly, placing yourself and your government in a very difficult and untenable position by opening the doors without having in place the safeguards to protect the vulnerable until there is such a consensus. On every other licensed act listed in the regulated health professions legislation, there has been a consensus that those are the licensed acts, that those are harmful acts, that those are in fact treatments. This is not included.

There is no consensus, and what you are permitting with the passage of this bill and your proposed draft regulation, all it says is that any doctor and any psychologist, as long as it's in accordance with their college, can take this device, which is eminently portable, doesn't require any big facility to do it in—you know all the protections and protocols that are in place in a Comsoc facility and you also know that, while overwhelmingly doctors and psychologists and other health care practitioners are abiding by the standards within their profession, there are those who sometimes act in a way that doesn't make any of us pleased or proud.

The concern here is the lack of accountability, the fact that this doesn't have to be in any kind of an environment where you will have those safeguards, and I think the concern is real. I would ask you to stand this down and reconsider. All we're asking for is some safeguards for those that are incapable. We heard before this committee a psychologist who said he uses this regularly in his practice, in his office.

Mrs Johns: With consenting adults.

Mrs Caplan: Yes, he did, and he also said that it would be possible with your bill for an incapable person to be taken to someone's office to have this administered, and you've said that that could happen. This is so controversial. When organizations like the Association for Community Living—and I'm not going to go through the whole list again. Surely it's not that much to ask, when you remove an absolute ban, to put in place some safeguards.

What we're saying, and I know that Mrs Boyd doesn't agree, is: "We're satisfied in a Comsoc-run facility that there are the safeguards there. Exempt them all." We know that the procedure is only available in one Comsoc facility. It's that controversial in Ontario. But this opens the door to incapable people being taken to a psychologist's or a physician's office or having a psychologist or a doctor come to an individual's home and in the privacy of that home, unbeknownst to anyone, an incapable person could be subjected to a highly controversial procedure.

You may have decided it's treatment, Mrs Johns, but the legitimate professional community and those who have concerns about vulnerable people receiving this as aversive conditioning haven't come to that same conclusion that you've come to. I suggest to you that, as a government, you're going to be very sorry if you open the gateway. You get one horror story, you're going to own this. You don't want that.

Mr Ramsay: You're going to wear it.

Mrs Caplan: And you're going to wear it. So my advice to you is, think very carefully before you do what you're proposing, because you get one horror story and it's yours. We've warned you and we've told you and it would not be difficult for you to add a little bit of protection for vulnerable persons who are unable to defend themselves. You have a responsibility to do that, especially where you've got something which is as controversial as this.

I feel very strongly about this and I don't believe the ban was appropriate. I've said all along there should be access to this. I'm prepared to accept Comsoc's procedures and protocols and say that they are exempt from the legislation. But don't ask us to allow house calls potentially; don't allow this to be provided in an office without any scrutiny or accountability. You're asking for problems.

Mr Tilson: Mrs Johns has stated pretty well what I had intended to say; in other words, that this treatment and process will be regulated by the College of Physicians and Surgeons as well as the College of Psychologists of Ontario, and it is there that the accountability will take place. I would like to read into the record the letter, a very brief letter, which has been distributed to members of the committee from the College of Psychologists, which I think deals with a number of the issues that have just been raised, particularly by Mrs Caplan, if I could read that letter.

The Chair: It seems I have very little authority. You can do what you wish.

Mr Tilson: You have all kinds of authority, Mr Chair, and I just notice—

Mr Marchese: We can go on forever.

Mr Tilson: It's a letter from the College of Psychologists to the Ministry of Health, dated February 21. It concerns the draft regulation on faradaic stimulation.

"Thank you for sending the draft regulation on faradaic stimulation. I understand that you will be adding to the draft the requirement that a person will be exempt for the purpose of applying electricity for aversive conditioning on the order of a member of the College of Psychologists and under the direction of a member of the college. This satisfies the college's concern that the public be assured that those administering this procedure are trained and provided with clear protocols for the appropriate use of the technique as well as the circumstances for discontinuing the conditioning program.

"The college considers the proposed amendment to be in the public interest. There are specified circumstances in which aversive conditioning is the only effective treatment to manage such behavioural problems as self-injurious behaviour, compulsive behaviour and addictive behaviour.

"As you know, there are a small number of developmentally disabled individuals incapable of consenting to treatment on their own behalf but for whom the potential for the consent of a substitute decision-maker allows them to receive a treatment which reduces the incidence of serious self-injurious or aggressive behaviour. Such treatment is utilized under stringent protocols specifying precisely when and how the treatment will be administered and under what circumstances it should be discontinued to ensure that only demonstrably beneficial treatment is undertaken.

"There are also clients capable of consenting on their own behalf for whom the use of electricity for aversive conditioning may be the only treatment effective in reducing such compulsive behaviours as those involved in paedophilia. Some addictive disorders may be effectively treated with aversive conditioning as well in order to counteract the powerful reinforcing effect of the particular substances to which the individual is addicted and to disrupt the behaviour associated with seeking and ingesting such substances.

"The proposed regulation continues to make this treatment available where clinically necessary and ensures that it will be provided only under the authority of regulated professionals who have the expertise to ensure effective and ethical use of the treatment, thus protecting the welfare of the clients.

"Thank you for your assistance and for the opportunity to make a submission in the development and approval of this regulation."

Mr Chairman, I think that in many ways summarizes what the government's position is with respect to this regulation and the proposal under the bill.

1430

Mrs Boyd: We find ourselves in the same position, where the health care providers say one thing and the consumers say another. There are several members of the committee who were not here when the Ontario Association for Community Living made their presentation and it's extremely important for people to understand that this is the consumer group that represents people and their families where developmental delay has been an issue.

In the submission they gave to us, which they entitled *The Potential Impact on Persons with Intellectual Disabilities of Bill 19*, on page 13 they remind us about the conflicting information this committee received about how painful or not painful this is.

We all heard Mrs Singer say that she had tried it and that it was similar to the shock that you get if you walk across a wool carpet and touch a light switch. The next person who spoke about this issue said, "It hurts like the dickens." The next person who spoke said it was similar to touching a hot iron pan that's in an oven. We get three very conflicting notions of what and how painful this is from three different sources, all of whom are in favour of faradaic stimulation and all of whom claim to have tried it. So we need to be very clear among ourselves that this is meant to be painful; that is what changes the behaviour.

We are talking about using a painful electric shock to prevent somebody from continuing behaviour that someone else has decided they don't like. Now, in the

case of Brian Singer none of us would think that kind of behaviour would be suitable to condone in any way; I don't think there are any of us here who do. But in some of the other cases that Mr Tilson just read out from the psychologists there's real concern. This is used to control behaviours that someone in a position of power doesn't like, and if you have no controls over this kind of thing, incapable people who misbehave in the minds and the view of their substitute decision-maker could easily be subjected to this kind of aversive conditioning to change their behaviour. It wouldn't be the kind of tragic, awful case the Singers presented to us. So we have to be very clear about that. There are no controls in what you have allowed.

I'm going to read from the report of the Ontario Association for Community Living, starting on page 13, because they gave a verbal report which fit their 30 minutes. They presented us with a longer report, which I trust members have read but certainly didn't get read into the record, and it's important that we do that.

"OACL can assure the committee, having experienced the pain inflicted by these shock devices (some colleagues having submitted themselves to the procedure), and having heard the rationale for using it on persons with behavioural problems, that the procedure is, and is meant to be, quite painful. However, OACL's objection to the use of electric shock therapy for purposes of aversive conditioning is not based so much on the severity of the pain inflicted by it as it is on the very notion that an individual who indulges in self-injurious or aggressive behaviour can be expected to learn not to do so if he or she is treated with violence.

"The use of electric shock as aversive conditioning can only be described as an act of aggression which, in the absence of any legal justification, would surely constitute a criminal assault. No such justification existed, in OACL's view, prior to the proclamation of the Consent to Treatment Act and the Substitute Decisions Act last April. The prohibitions contained in those two statutes in effect confirmed that the administration of painful electric shock was contrary to law.

"One of the questions the committee must address is the fact that 43(5) of Bill 19 will amend section 66(12) of the Substitute Decisions Act in such a way as to provide the legal authority without which the continued use of electric shock as aversive conditioning would be a violation of the Criminal Code. Subsection 66(12) of the Substitute Decisions Act currently reads:

"The guardian shall not use electric shock as aversive conditioning and shall not give consent on the person's behalf to the use of electric shock as aversive conditioning."

"Bill 19 will amend this subsection by adding the words:

"...unless the consent is given to a treatment in accordance with the Health Care Consent Act, 1995."

"The clear intention and effect of this amendment is to remove any barrier or safeguard to the substitute decision-maker, whether a parent, or indeed any relative, providing consent to the use of shock as aversive conditioning. Now express provision is to be made in the new legislation for substitute consents to be recognized as

valid, without any kind of independent assessment by which it can be determined that there is no effective alternative means by which to control self-injurious or other destructive behaviour.

"The only requirement in the Substitute Decisions Act to establish the validity of the consent of a guardian or attorney for personal care to use shock as aversive conditioning will be that it 'is given to a treatment in accordance with the Health Care Consent Act, 1995.' What does this mean? First, shock must qualify as a 'treatment' under that act. Subsection 2(1) of the Health Care Consent Act defines treatment to include 'anything that is done for a therapeutic, preventive (or) health-related purpose.' It might be questioned whether behavioural problems are, strictly speaking, 'health' problems. Certainly OACL would maintain that the intellectual disability component of such problems is not a health issue. It has to be admitted, however, that if you injure yourself you have created a health problem. In this sense, shock may be regarded as a form of 'prevention' that would bring it within the definition of treatment.

"Even though electric shock as aversive conditioning is not mentioned in the proposed Health Care Consent Act, if it qualifies as 'treatment' in order to permit a guardian or attorney for personal care to authorize it under the Substitute Decisions Act, there would seem to be nothing to preclude its use under the Health Care Consent Act alone, in which case any family member could consent to it without having to obtain any court approval or any independent review of the necessity of its use. There is nothing in Bill 19 which would limit the use of the painful electric shock on the consent of a substitute decision-maker, regardless of where or by whom the shock is to be administered. This total absence of any safeguard to its use in this legislation is unacceptable.

"Section 12 of the Canadian Charter of Rights and Freedoms states that, 'Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.' Interestingly, the American Bill of Rights only prohibits 'cruel and unusual punishment.' The addition of the word 'treatment' in section 12 of our charter signals a clear intention that it applies outside, as well as within, the criminal justice context. In other words, non-penal use of painful stimuli by an agent of the government (or the authorization of such use in a statute or regulation) is as much a violation of the charter as are certain practices in the treatment of offenders. OACL would argue that when the recipient of painful electric shock is a devalued person who has already been subjected to a great deal of both physical and mental pain, and who cannot understand the rationale for the procedure, then a much lower threshold would apply in determining whether the practice is 'cruel.'

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"Those who defend the use of electric shock for purposes of aversive conditioning would counter the foregoing arguments by saying that without its use certain individuals will inflict much crueller punishments on themselves. This is, of course, the crux of the issue. OACL is as committed as anyone to the proposition that persons with mental disabilities should be protected from harm, whether caused by someone else or by that per-

son's own actions. That proposition is also reflected in the Charter of Rights. Section 7 says, 'Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.' In OACL's view, 'security of the person' of an individual with a serious intellectual disability combined with behaviour problems includes both freedom from his or her own self-injurious acts and from the administration of such punitive treatments as electric shock. OACL does not believe that a choice should ever have to be made between these two violations of the guarantee of security of the person. There are alternatives to the use of shock, or indeed of any punitive or aversive procedures.

"If the standing committee comes to the conclusion that for certain individuals such a choice must be made—ie whether to administer painful electric shock or to allow the individual to go on injuring himself—the OACL urges consideration of the second half of the guarantee set out in section 7 of the charter. Section 7 not only guarantees the right to security of the person, but also that everyone is entitled not to be deprived of such a right 'except in accordance with the principles of fundamental justice.' The basic principle of fundamental justice is that a violation of anyone's security of the person must not be allowed unless there has been an impartial adjudication of the reasons for doing so. OACL believes very strongly that, at the very least, Bill 19 must be amended so that the authorization of the use of electric shock as aversive conditioning will require a hearing, either by the court or by the Consent and Capacity Board. This practice is so controversial, and in OACL's view so dehumanizing, that substitute decision-makers should never have the authority on their own to provide a valid consent to its use."

Appended to this brief is a letter written on August 7, 1995, to Premier Harris, by Dr Walter Eigner, president of Inclusion International, urging that the government of Ontario not remove the prohibition of substitute consent to the use of shock for purposes of aversive conditioning contained in the Substitute Decisions Act and the Consent to Treatment Act. Because Mr Tilson read the letter from the psychologists into the act, I'm certainly going to read the letter of Inclusion International, which is the International League of Societies for Persons with Mental Handicap, into the record.

"Dear Premier Harris,

"Re: Use of electric shock for purposes of aversive conditioning

"I am writing to urge you to retain and uphold the statutory prohibition of substitute consent for the use of electric shock for purposes of aversive conditioning which came into effect in Ontario earlier this year with the proclamation of the Consent to Treatment Act and the Substitute Decisions Act.

"The International League of Societies for Persons with Mental Handicap (Inclusion International) consists of 169 organizations in 105 countries around the world. All of these organizations as well as the league itself exist to promote the wellbeing of persons with intellectual disabilities and to defend their rights and status as full citizens of their respective nations. As our newly adopted name—

Inclusion International—implies, we believe very strongly that the interests of persons who have been labelled mentally handicapped can only be assured when they are included in their natural communities and learn, work and participate in other activities in the company of their fellow citizens who have not been so labelled.

"We have long regarded Canada, and Ontario in particular, as a society in which honest and sustained efforts have been made to ensure such inclusion. We think of Canada, with its constitutional guarantees of legal equality without discrimination based on mental or physical disability and of freedom from cruel and unusual treatment or punishment, as a beacon lighting the way for people of every race and nation to find humane, empowering and valuing approaches to sharing the benefits of citizenship with those who have disabilities.

"Since our membership comes from so many countries worldwide, we are aware of some societies that continue to use torture for the purposes of controlling the activities of people who live within their borders. There are also countries represented in our league where people with mental disabilities continue to experience unspeakably degrading conditions on a day-to-day basis. However, we are not aware of any countries where electric shock is used for the purposes of behaviour management except Canada and the United States.

"Persons with mental handicaps who engage repeatedly in serious destructive acts challenge us to make extraordinary efforts to preserve them from harm and to accommodate their needs. This is never easy. None of us can claim that we have been unfailingly successful in our dealings with such individuals. Notwithstanding our frustration in attempting to find solutions to such problem behaviour, I acknowledge the guiding principle that we simply cannot allow people to continue engaging in such behaviour, particularly when it is directed against themselves. Having said that, however, we must also invoke other principles that protect the dignity and fundamental humanity of persons who are beset with such difficulties.

"The technology known as aversive conditioning includes the administration of a wide range of stimuli that are physically and/or emotionally painful. The most aversive of these procedures that are sometimes employed in behaviour management programs is the administration of painful electric shock contingent upon the individual's inappropriate behaviour, such as a self-injurious act. There has been considerable controversy surrounding these procedures. Some claim that it is a highly effective way to stop self-injury. Others say that it only temporarily alleviates the most disturbing aspects of the problems experienced by those who engage in extremely challenging behaviours.

"We believe that it is an inescapable reality that you cannot teach people that they should refrain from indulging in violent behaviour by using violence against them. The administration of a painful electric shock may jar them out of their present pattern of repeated self-injurious acts but the benefit of doing so may be more than offset by making it less possible for them to engage in positive, adaptive interactions with others. There is a very high risk that they will be driven further and further into their separate world of pain, rejection and humiliation.

"There are several theories as to what causes some people with intellectual disabilities to injure themselves. We have to assume that whatever these underlying root causes are, they represent serious negative perceptions that these persons have of themselves and of their relationships with the people around them. Simply stopping the behaviour cannot in itself bring healing to these inner psychic wounds, especially when the pain is used to stop it. Such persons need to experience real friendship and acceptance. They need to be treated as human beings.

"We are aware that, even with your province's new law effectively banning the use of shock for purposes of controlling people's behaviour, this issue is before the court with respect to its continued use on two young men in one of Ontario's institutions for persons with intellectual disabilities. We do not presume to sit in judgement on the parents of these two individuals or on those who have day-to-day responsibility for their care. We know, from sad experience, that these difficulties generate a desperate need to find solutions and that non-punitive alternatives take time to prove their effectiveness.

"We also understand that the constitutional challenge to the provisions banning substitute consent to the use of shock as aversive conditioning does not entail a question of the validity of those provisions but rather their constitutionality as applied to these two individuals. Consequently, the court is not being asked to strike down the legislation but to exempt the two subjects of the litigation from its application. We are concerned, however, that your new administration may be tempted to solve the problem by failing to defend the integrity of the legislation or even by repealing the provisions of the two statutes. We think this would be a tragic step backwards.

"We strongly urge you to direct the responsible ministers in your cabinet to encourage serious dialogue among the families of these two young men, the public servants who have responsibility for their placement and care, and representatives of our Canadian member organization, the Canadian Association for Community Living. CACL's counterpart in your province, the Ontario Association for Community Living, along with its local associations, possess or can gain access to a great deal of information about positive approaches to behaviour problems. Not only that, but they are very seriously committed to helping people with mental disability labels achieve lives of real dignity and worth, both in their own eyes and in the eyes of the community. We believe that you and they have been presented with an opportunity to create genuine validity for Ontario's new legislation barring the use of electric shock for purposes of aversive conditioning, not simply in the constitutional sense, but in terms of common sense and common humanity as well."

That is signed, "Yours very truly" by Dr Walter Eigner.

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I think that one of the issues here is that we can all get caught up in the emotional presentation of families who are experiencing the very kind of pain that Dr Eigner talks about, and I think we all feel very anxious about being in a position where we might prolong that.

But I would say that those who cannot speak for themselves are the ones that governments must also protect. And the vulnerable who cannot and do not have the capacity to consent themselves must have some sense that their behaviour is not going to become an easy target for this kind of aversive treatment without some other outside body judging that it is necessary.

I can tell the committee members that this is a long way for the Association of Community Living to come. The Association of Community Living was adamant in its stand for a number of years that this be forbidden outright. They have made a huge step by saying that they would be prepared to accept the possibility of a substitute decision-maker allowing this treatment if they had affirmation from a court or from the Capacity and Consent Board, and I would urge committee members to take very seriously that we have not only to protect the rights of the vulnerable, but also to protect the rights of every citizen.

I think that the Ontario Association for Community Living's arguments around the constitutional issues are ones that we ought to pay attention to. I think we'll hear them again if you go ahead with this action, where there is no due process for the vulnerable person built into your legislation.

It is very interesting that this is a treatment that is not used anywhere else except in Canada and the United States. In fact, it is not used anywhere else in Canada but in Ontario, and it is only used in the context of this in one facility by one practitioner. And I think we need to keep that in mind.

There's a reason for that. This is not a treatment that is limited by the profession. It's limited because it is seen as not being an appropriate treatment, particularly for those who are vulnerable and who are helpless to speak for themselves.

So I would urge the government, at the very least, to accept the amendment adding subsection 9(3) brought forward by Mrs Caplan, and to take very seriously the concerns that have been raised.

Mr Ramsay: Mrs Johns, is any of this resonating with you at all, any of the arguments we've been making?

The Chair: Excuse me. We have the right to ask for clarification of PAs, but we do not have the right to say, why is it you do not agree with me? And I've heard that a number of times today; very non-productive.

Mr Marchese: We can say that, though, Mr Chair.

The Chair: I don't think that's helpful to this hearing.

Mr Ramsay: I was trying to be helpful, because if there was any movement there, I would then decline to take my turn. Obviously, there's no response.

Mrs Johns: Take your turn, David.

Mr Ramsay: Then I'll continue. Let's personalize a little bit. When we go to a doctor and maybe we receive some information that is very disconcerting, that we have a serious illness and there are a choice of treatments available to us, maybe some are quite radical, some are called radical in regard to surgery, and there are other types of treatments available. Sometimes when that happens we decide we want a second opinion.

Whether the health care system can afford that any longer is a moot point, but usually when there's some-

thing that serious, we do seek out a second opinion. I think that's all we're asking for here today on behalf of vulnerable people, only that, not that you outlaw this particular procedure. In fact, we want to make sure it is available, but what we want to do is to say that these people deserve a second opinion because they can't even consent themselves.

I'm equating a safeguard with almost a second opinion, that you will run this treatment decision by somebody else. In this case, it's going to be the Consent and Capacity Board. That's all we're asking.

Mrs Johns: In our case, it's going to be the colleges that are monitoring this.

Mr Marchese: We understand that.

Mrs Johns: And on top of that, there will be a number of processes, as you heard from Mrs Singer that her son went through a number of different—I hesitate to use the word "treatment" but I will, in quotation marks, to try and alleviate this situation along the line. This is not the method of first choice.

The Chair: Mrs Johns, you don't have the floor.

Mrs Johns: I'm sorry.

The Chair: Mr Ramsay has the floor and then we have Mr Marchese, Mr O'Toole, and probably a number of others. If you wish to have the floor, raise your hand and I'll give you the floor.

Mr Ramsay: The other thing is, it's not a big problem, and again referring to the letter that Mr Tilson had read into the record, in the third paragraph, they state, "As you know, there are a small number of developmentally disabled individuals incapable of consenting to treatment on their own behalf" who maybe require this.

So all we're saying is we would like a safeguard in place as those people have today in a Comsoc facility, and again when you start to bring up the Singer example, the safeguards are there. We're talking for people other than the Brian Singers of the world who don't happen to find themselves in a facility where those safeguards are applicable. And that's all we're asking for.

In Ontario right now, there may not be anyone, but there could be in the future, and we believe that the government does have a responsibility to have some safeguards in place, not that we want to ban this treatment outright, but that it be made available as a last choice.

The other argument I'd make too is that if you remember when many parents came before us who had children in this position, it always astounded me that the parents who had said, "Well, it was about a year previous that we were told about this treatment, but we continued along the line of the course of different treatments that we were attempting before we got to this decision." People consider this very seriously. And even those, and I was surprised that it was one year and you're going to go to a second year, and you and I both were shocked by some of these situations, and I was just marvelling at the tenacity of these parents and how they were just sticking with these different courses of treatment until they got to the end where this last treatment was the most appropriate one.

It just seems to me that to have somebody to make a decision on behalf of somebody who's not capable of

making that decision for themselves without some sort of safeguard in place is irresponsible. I really beg you to have some sort of safeguard in there for those people. I think it would be irresponsible of us as legislators and you, as a government, to abandon those people.

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Mr Marchese: Quite simply, Mrs Johns and Mr Tilson, you are making a mistake, both of you, in defending this position. We admitted that our legislation went too far. You're doing the same thing. You're going too far, and it's interesting. You are closing yourselves to that very thing, to the very position that I'm advancing, that is, we admit we made a mistake. You're going the other way and you're saying, "No, we're not."

What we have here is a case of who do we listen to? Who is informing us on this? The people informing you are the College of Psychologists of Ontario. You read that letter into the record. It's interesting again who it is you're listening to when it comes to how you make decisions on some matters.

If you look at the other end of who we're listening to, because we're concerned about this, those who are opposed, those who are saying, "Delete the present provision that you've got and restore what was there in the first place," subsection 66(12) of the SDA, feel so strongly about this that they're saying: "Please don't introduce your amendment. Restore the old one because what you're proposing is bad and what was in place was good."

We are admitting that's a problem, that we can't go back to the old because, as Mrs Singer told us, it's a problem. The following groups, CMHA-OC, QSPC, OWN, PCLS and SMA, as organizations are saying, "Delete this provision and restore the old," and we say that's going too far. That's what we had. That's a lot of organizations, however, saying, "Restore what we had."

Then we move on to another list of people. We go to the organization PPAO, which says, "Electric shock as aversive conditioning should be permitted only where," and they give a whole list of safeguards because they're very concerned about it. That's why we're concerned. It's not a social democratic position. It's a position that's advanced by many groups and we're worried and we're saying, "Let's listen to them." They say that these are the limitations or the conditions as to where you permit it:

—"the patient is at risk of sustaining serious bodily harm if the treatment is not administered;

—"the patient or substitute decision-maker consents to the treatment in writing;

—"the person consenting to the treatment understands that consent may be withdrawn at any time;

—"the treatment is in accord with standards for behaviour management and behaviour modification programs established by the government;

—"the treatment is to be administered in a facility designated by regulation under the Health Care Consent Act; and

—"the Consent and Capacity Board makes an order authorizing the treatment."

That's PPAO. They're saying, "Here are the conditions under which it will happen." One of them is the very one you're worried about: "The patient is at risk of sustaining

serious bodily harm." It's covered by what we have here, what's proposed here by this amendment and by our amendment that puts more conditions.

Further down the list are those who say, "Permitting substitute decision-makers to consent to the use of electric shock might encourage the unnecessary use of this treatment." There are three organizations or three types of people who have said this is a problem, and they are NMHSN, LBWAC and Galli. They said, "If you leave it to the substitute decision-maker, this might encourage the unnecessary use of treatment."

Here's another statement made by many other organizations. They say, "Electric shock treatment should require a court order," more than the capacity board. Those who say it should require a court order are TMCA, LAW, ACE, FMHA, APR and OACL. These are organizations saying: "The capacity board isn't sufficient. We want it to go to court."

Then there's another statement made by other organizations who say, "Electric shock treatment should not be given to anyone without his or her consent." They are CMHA-OC and CMHA-W.

It goes on. "The treatment should not be reinstated. However, if it is, there should be standards and controls and a protocol established to first ensure that all other available treatments have been ineffective; the person is at serious risk unless the ECT is administered; the facility is authorized to provide this treatment; and it has the authorization of the board."

How can you reject all these positions, the safeguards that these people are advancing? How can you reject their concerns? It baffles me completely that you should. Your reliance is completely on the College of Psychologists and what you're saying is: "They know what they're doing. Go back home, everything is okay."

Mr Tilson: You're saying they don't know what they're doing? You're not saying that surely?

Mr Marchese: I'm not advancing that argument. I'm saying that what I heard you saying is—you read this letter from the College of Psychologists into the record—you're convinced that they cannot do any wrong, that they wouldn't do it to hurt anybody, that everything is all right and that what all these organizations are saying is perhaps not right. They might have some concerns but they're wrong, because we really trust the psychologists, because we know what they're doing. So disregard the opinions of all these organizations and individuals that have spoken up on this, because as well-meaning as they are, they're simply wrong.

I'm not sure you want to say that. You didn't say that, but by implication that's what you're saying, in my view. That's the effect it has when you deny them this concern. What is before us is just one condition that says, "Bring it to a capacity board." We have stronger conditions. This is yet just one condition that says: "Bring it to a capacity board. Let them determine whether it should be done."

I've argued earlier that if you bring it to a capacity board, they will say yes to a case like Mrs Singer. But what it does is to give a control mechanism, a mechanism for review. Do you want to take that away? Why would you do that? On what political, ethical, moral, intellectual

grounds would you do that, except to say, we trust the psychologists will do the right thing? How could you do that?

Please don't disregard the opinions of all the organizations that I've read into the record who have serious concern about this. Please be informed by them; do not reject them. Because if you vote against this motion, you are rejecting their serious concerns around this.

Mr O'Toole: I just want to clarify, being new here, and I've just listened very intently, we are dealing with faradaic stimulation, not the traditional shock therapy, the difference being that it's sort of low voltage versus somewhat higher voltage. Is that what faradaic stimulation is about? It's like walking across a wool-carpeted floor and touching a switch or a piece of metal. It's light voltage. Is this something that would stun someone or put them down? I want to make it very clear, because I'm sort of understanding that we're approving the traditional Frankenstein kind of shock therapy, and certainly that's not what the clinical information I have would lead me to believe. It's light voltage, it would not render the person harm, as a clarification.

The Chair: You're correct. It is not—

Mr O'Toole: So it's not shock therapy but faradaic stimulation.

The Chair: Yes.

Mr O'Toole: So we'll just make sure the record's very clear that is what we are considering. Now, secondly, the two groups, and all the letters behind them, Mr Marchese has read in there, basically the college, which is a regulating body, as are doctors, the rest—they are somehow legitimized, they've gone through a process—and we have an eminent person suggesting that it should be used, suggesting also that every other available treatment option should be considered. So it's kind of one opinion versus another, not much different than what's actually been happening here for the last two hours, none of which is actually validated. We're all just full of—not faradaic, but something similar.

We are dealing with the consent to treatment. First and foremost, this is really the problem I have: Who is the legitimizing body? Is it the exact person who has been given the power of consent, to advocate on behalf of someone, and on their say, would they be allowed to proceed with—we dealt with what was elective or experimental surgery earlier on. Would it be then subject to review by a higher authority, this permission body?

Who actually has legitimate authority? The person who has the power of consent or the board? The government? Has the state got control here or the person who we were trying to give the control back to, the family, who have been through a lifelong tragedy of trying every possible treatment remedy and have finally exhausted it and come to one more, perhaps experimental, perhaps not thoroughly legitimized in all the medical journals.

1510 Do you understand what I'm saying? Mrs Caplan, I would ask the question more specifically of you—

The Chair: I'm sorry, I don't know whether it's proper.

Mr O'Toole: Who's making the decision, the state or the person who's—

The Chair: Mr O'Toole, I don't know whether it's proper to be asking the opposition members without their consent.

Mr O'Toole: It's clarification.

Mrs Caplan: I'm happy to answer it. It's my amendment.

The Chair: Okay.

Mrs Caplan: I'd be happy to clarify the amendment as it has been proposed—

Mr O'Toole: No, no. One specific question: Who's the decider?

Mrs Caplan: —so it was what happens under this legislation versus what the amendment would produce.

Mr O'Toole: I'm the person who has the power of consent to treatment and I've asked, after exhaustive testing, to use this faradaic stimulation.

Mrs Caplan: You wouldn't have to ask to use it. Under your legislation, if you were the guardian or decision-maker for an incapable person, this legislation would not require any safeguard in how a decision was made to use faradaic stimulation on an incapable person. If they were in a Comsoc facility we're satisfied that there are the protocols and the procedures in place, that there are safeguards there to protect vulnerable persons. In fact you should know, Mr O'Toole, that there's only one Comsoc facility in the province that provides this procedure because it is so controversial.

What our amendment says is not that the state should make the decision—the state makes the decision now in Comsoc facilities as to what the protocols are—but outside of a Comsoc facility what we're saying is that the Consent and Capacity Board, which you construct in this legislation, should give permission before any individual who has all power over an incapable person outside a Comsoc facility should be able to seek and have this treatment provided by a doctor or a psychologist in their office, in their home or in a group home; that there should be the same kind of safeguards outside of a Comsoc facility as there are presently inside.

It's quality control, quality assurance. Comsoc has that by having those protocols and procedures. This procedure is done as a last resort and it's not done lightly. With your legislation, without our amendment, it would open it up to allow the decision to be made—

Mr O'Toole: By the caregiver.

Mrs Caplan: Not necessarily the caregiver, no. It would be the person who has control, whether it's a guardian or a substitute decision-maker; it may or may not be the parent. The truth is you don't know who it is. That's the issue, and there would be no safeguards to protect the vulnerable person.

While we may have some concerns about the use of this therapy on competent people, competent people can decide whether or not they want it, but vulnerable people who are deemed incompetent under your legislation would have no protection outside of a Comsoc facility.

Mrs Johns: A point of clarification, please: In section 19 the substitute decision-maker has to consider the best interests and wishes of the person they're making the decision for.

Mr O'Toole: So the substitute decision-maker ultimately, however close they are to that individual patient,

is the person who goes through the process of all the treatment and finally says, "In the interests of saving this person's life or other parts of their body, let's give this a try." They can also withdraw that permission, as opposed to some board or some appointment group coming in and reviewing that.

Mrs Caplan: Monitoring. The issue is whether you believe that this—I'm going to use the word "procedure" because the jury is out as to whether it's a treatment or not—whether you believe in your heart that this treatment should be permitted without safeguards outside of a Comsoc facility. That's the issue. It is so controversial that the previous government banned it, although I think they believe that that ban went too far.

Mr Marchese: Who said that?

Mrs Caplan: Everybody has agreed that a ban goes too far. So the question is, how far do you go in the other direction without safeguards?

Mr Marchese: The other way, completely.

Mrs Caplan: Is there some reasonable safeguard that just protects the vulnerable person that should be in place? We say there is. We're saying we're satisfied that in a Comsoc facility the safeguard is there. Our concern is that because of the controversial nature of this procedure, you would be wise as a government to put the safeguard in place outside of a Comsoc facility, that would require permission from a body that is there to add some accountability. That's all. It's protection.

Mr O'Toole: I understand. I know it's the person who gives consent, technically.

Mrs Caplan: That's right.

Mr Marchese: Are you ready? I'm ready for the vote.

Mrs Boyd: I'm sorry. I happen to be on the list.

Mr Marchese: Oh, I'm sorry.

The Chair: We have at least two speakers yet to go, and we will hear again the same arguments. Mrs Boyd and then Mrs Johns.

Mrs Johns: I'm not on the list.

The Chair: I thought you were.

Mrs Johns: No, thank you.

The Chair: Sorry. We have one speaker and then we'll have the question.

Mrs Boyd: Mr Chair, I'm very sorry if a member who was not present for the presentations takes exception to the fact that those of us who feel very strongly that there is no protection for the vulnerable in the law that's currently in front of us and wants to talk about this as being some kind of a political issue. It is not a political issue, it is a very serious problem.

There are very strong beliefs and feelings and concerns on both sides of this issue, and both the Liberals with their amendment and our amendment that comes later on under section 19.1 of the act were efforts to try and come to a compromise between the banning of this on the permission of substitute decision-makers and the allowing of it under certain circumstances.

It is not some board that's appointed, it is the board that your legislation creates that is making decisions about the capacity and about the appropriateness of the decisions that are being made in the case of incapable people, in the case of the Liberals. In ours it was the court, which was what was asked for by the majority of

presenters who came before this committee saying they did not want a restoration of the ability of substitute decision-makers to use this particular procedure for aversive conditioning to control people's behaviour.

This is a very serious issue and it is not something that is just out here and people are just trying to prolong this discussion. I think you do us a disservice by imputing those kinds of motives, and it's not something that we do in our traditions in the Legislature. We try very hard not to and we deserve to be called on it when we do.

I think, Mr Chair, that it is quite clear from the way this discussion has gone that the government is not prepared to move on this. On your heads be it.

The Chair: We have unanimous agreement to split the vote, and we are dealing with the amendment being subsection 9(3) only and then we'll come to subsection 9(4). Shall the amendment, subsection 9(3), pass?

Mr Marchese: On a recorded vote, Mr Chair.

Ayes

Boyd, Michael Brown, Caplan, Marchese, Ramsay.

Nays

Boushy, Johns, Leadston, O'Toole, Parker, Tilson.

The Chair: The amendment is defeated.

We are now dealing with the second portion, being subsection 9(4). Shall the amendment—

Mr Marchese: If (3) is defeated—

Mrs Boyd: It's defeated.

The Chair: That may be, but I guess we'd better record our vote.

Mr Marchese: Can we get an opinion from Ms Bryce?

Clerk of the Committee (Ms Donna Bryce): Yes, it's redundant now.

The Chair: Is it redundant? Legislative counsel has advised that it is redundant. Would you withdraw the second portion, Mrs Caplan?

Mrs Caplan: There's no point. You can't have the second without the first.

The Chair: Thank you. I would now ask, shall section 9 pass? All those in favour?

Mrs Caplan: Just a minute. We have a new section 9.1.

The Chair: Yes. We deal with that separately, I'm told.

Mrs Caplan: That's fine. I just wanted to make sure we were dealing with the separate section.

1520

The Chair: We're coming to it, yes. We're dealing with section 9 and I've asked for everyone in favour of the motion—Mr O'Toole?

Mr Marchese: Wake up. There's a vote here, John.

The Chair: Thank you. All those opposed? Section 9 is carried.

Mrs Caplan: Was that a recorded vote?

The Chair: No, it wasn't requested.

Mrs Caplan: I'd like it recorded, please.

The Chair: Is there unanimous consent to have a recorded vote? We've already voted; that's the reason I'm told—

Mrs Caplan: I thought there would be a recorded vote.

The Chair: There was on the amendment.

Mrs Caplan: I wanted to ensure that I called for it. Is there unanimous consent to allow a recorded vote?

The Chair: No objection.

Ayes

Boushy, Johns, Leadston, O'Toole, Parker, Tilson.

Nays

Boyd, Michael Brown, Caplan, Marchese, Ramsay.

The Chair: The motion is passed.

We are now dealing with a new section, 9.1, which I believe is contained on page 98a.

Mrs Caplan: I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"Meaning of 'excluded treatment'

"9.1 (1) In this section,

"'excluded treatment' means a treatment that is excluded from the definition of 'treatment' by clause (g) of the definition of 'treatment' in subsection 2(1).

"Administration of excluded treatment without consent

"(2) If a health practitioner who proposes an excluded treatment for a person is of the opinion that the person is incapable with respect to it, the health practitioner may administer the excluded treatment to the person without the consent of the incapable person's substitute decision-maker if,

"(a) the incapable person is not objecting to the excluded treatment;

"(b) the health practitioner does not know of a wish not to have the excluded treatment expressed by the incapable person while capable;

"(c) the health practitioner does not know of any objection to the excluded treatment by the incapable person's substitute decision-maker; and

"(d) the health practitioner is of the opinion that the excluded treatment is in the incapable person's best interests, having taken into consideration the factors set out in clause 19(2)(c)."

This is companion to the previous amendment that was put forward on the issue of low risk and this puts in place some protections to make sure that while we dealt with the technicality of is it or is it not considered high risk or low risk, this allows the consideration to be given as opposed to just opting into the act. It actually states the taking into consideration wishes, if known, and also that the incapable person is not objecting and that you believe it's in their best interests. It goes one step beyond what we dealt with earlier, where we brought in the Bohnen amendment, is the one I was referring to. This is companion to that, where it just says you don't have to opt into the act; another alternative that you have is to consider whether this low-risk treatment is something that the incapable person would consent to, is in their best interests, and if there's no decision-maker around for the purpose of opting in, it allows for treatment to commence if the incapable person is not objecting. So it adds some interest test on the part of the individual.

On the other side we gave protections to the health care provider who wanted to opt into the act when there's a substitute there. This is where there is no substitute.

This is not an emergency situation. We thought this was a thoughtful addition to the legislation because, just to explain fully, this is not the emergency situation, this is dealing with the low-risk treatment, where there might be some question and it just allows that if you think that the person would agree if they were capable, it's okay. That's the intent. It's just to put the person's interests into the equation. The Bohnen amendment protects the providers, and we've accepted that. We think this adds a little bit of protection for the incapable person where there's not a substitute readily available. It allows the treatment to go forward if the practitioner deems that it's in the patient's best interests and they're not objecting. If they are objecting, then the other parts kick in.

Mrs Johns: If we could just debate for a few minutes. We haven't had much time to look at it. As I understand this, and I've been looking at it a little bit over the last little while but I haven't really had a lot of time to look at it, what you're proposing is that if there is no consent to the treatment in section 2, and he has no objection, then the treatment goes forward.

Mrs Caplan: Right.

Mrs Johns: In our act, if it's low risk, then the health practitioner just goes forward with the treatment.

Mrs Caplan: Whether they object or not.

Mrs Johns: Whether they object or not. The reason we have put that in, from my reading throughout the four weeks, is because the doctor makes an assessment within his capacity or his ability—his standards, if you will—about the liability versus the amount of risk associated with a specific item that's going forward. If there's no risk to making a stitch in a person's arm, they may well do that if the person is objecting. For example, an Alzheimer's patient or someone who's unhappy with a doctor, frightened of a doctor or something like that.

Mrs Caplan: In this situation, Mrs Johns, in that case, for example, where the practitioner would know that when the person was capable they would not have objected to having a stitch put in, they're protected. You're quite right, under your previous amendments, which we supported, the way the act works now is that there's liability protection, blanket liability protection, and you've mentioned the word "liability." If a practitioner provides a treatment to an incapable person in good faith, there's protection against liability, and that's fine.

Mrs Johns: If they opt into the consent.

Mrs Caplan: If they opt into consent to treatment, they get the liability protection. So there's a big incentive to opt in. What this says is you don't have to opt in in order to have that protection as long as you've considered: Is the person objecting? What would their prior wishes be as far as what you're about to do to them? Are you aware of any prior objections, or is there a substitute decision-maker around to assist with that? It's just a bit of protection for the individual as well as having given protection to the practitioner. So what it says to the practitioner is, "You are getting under this legislation protection against liability by opting into the act, even for low-risk treatments." There's no suggestion that there will be battery charges possible. That was what Ms Bohnen came forward with. You've now added those protections.

What this one says is that where you have excluded a treatment, it's very reasonable to consider how the incapable person would feel and react. By thinking about that, the protections are there as well. So this is the balance. On one side you've considered the rights and obligations of the practitioner, and here you're considering the wishes of the person. That's why we've put number one, if they're not objecting, you've got no problem; if they are objecting, you'd better think about what you are aware of. That's all it is.

Mrs Johns: It seems to me you're extending the liability to the practitioner even further by saying if the person doesn't object and it's a low-risk treatment; whereas before, the practitioner would say, "Okay, under the common law, I could be challenged with this." You're saying no, extend the liability to them.

Mrs Caplan: That's right. That's exactly right. Because what you've said is that they consider, is the person objecting, what their wishes might be, and that's the good faith, best interest test. We think that's in the individual's interests. We think that the providers would have no objection. In fact, it protects them. These are for the low-risk treatments, that they would have to opt into the act in a formal way. We think this is a good idea because you're dealing with those excluded treatments. That's the purpose.

1530

Mrs Johns: I have a problem with that, first of all because I believe if it's a low-risk treatment and the doctor is prepared to take the liability for that, that should happen.

Mrs Caplan: Why?

Mrs Johns: Because he's the one who's assessing if it's low-risk or not.

Mrs Caplan: You have given liability protection from any high-risk treatment of an incapable person under your legislation. We're now talking about the excluded acts. The risk of liability is very, very low. All this puts into place is a view that they have to consider: Is the person objecting or not? What are their wishes? The issues of liability are a red herring; that's not what the issue is.

Ms Perun: This is just another issue that we had with respect to clause (c) as well. You seem to be saying if the substitute decision-maker is not around, but (2)(c) seems to indicate that's not really what is intended. So I'm just wondering if you could—

Mrs Caplan: In the first two cases, there may not be anybody around. So you consider, are they objecting and are you aware of prior wishes? This is low risk and you do not need consent from a substitute decision-maker for low risk. The third case is, is there any concern being expressed by the substitute? If there is none, go ahead; no problem. The last case is, are they of the opinion that this is in the interests of the patient? If so, again, you're dealing with low risk. You're just saying these are the things you have to consider. In the first two cases, there's no substitute around; in the second two, there may well be. That's why there are four—(a), (b), (c), (d). Do you have a problem with it?

Mrs Johns: Mrs Boyd has her hand up, so I thought I'd hear what she had to say.

The Chair: Mr Tilson is next, then Mrs Boyd.

Mr Tilson: I just want to make sure I understand the amendment. Do I understand you to say that if there's a minor treatment—

Mr Marchese: Low-risk.

Mr Tilson: A low-risk treatment, thank you—with these certain situations, for example, "(a) the incapable person is not objecting to the excluded treatment," so in other words, if the incapable person does object, you have to have consent. That's what you're saying?

Mrs Caplan: What it says is, with a low-risk treatment. Now we're not talking about the treatments that are included under the legislation.

Mr Tilson: Yes, that's right; the low-risk treatment.

Mrs Caplan: This is the stuff that's excluded. If there's no objection, go ahead. If there is an objection, then you have to say, are you aware of a prior desire, wish, whatever or something that has been expressed while the person was capable? Then, if you know that they would have said, "If I break my arm, set it," or—mind you, that would be a risky one. We're talking about something minor; clean a wound. That's it, you're talking about cleaning a wound or syringing an ear.

Mr Tilson: I'm wondering how restrictive you're making this. In other words—

Mrs Caplan: In fact, I think we're opening it up. I think it makes it less restrictive.

Mr Tilson: All right, but I'm wondering; for example, a low-risk treatment, a blood test. So a doctor or a health practitioner is going to administer a blood test and, looking at the first one, which is clause (a), the incapable person pulls away, does that mean that the health practitioner has to go and get consent?

Mrs Caplan: No, not at all. If the incapable person is saying, "I don't want the needle," then the—

Mr Tilson: What if they just pull away? What does that mean? That would mean they don't want it.

Mrs Caplan: That means they're objecting, and if they are objecting, you go to step 2, which is (b), (c) or (d).

Mr Tilson: So you're going to make a doctor get a consent for a blood test?

Mrs Caplan: No. This does not require a consent; what it does require is some discussion and communication to determine what is in the best interests of that patient for a low-risk treatment. We'll use the example of the insulin injection.

Mr Tilson: Well, let's stick to the blood test.

Mrs Caplan: This person has been a diabetic all of their life, they've taken insulin all the time, they're in a hospital environment, they know that it's time for the insulin injection and, for whatever reason, the patient retracts. The doctors know that this person has always had insulin injections and would continue to want them. They can administer it; no problem.

Mr Tilson: Let's just stick to something simple like a blood test, like pricking one's finger to get a blood sample. If an incapable person says, "No, I don't want that," or doesn't say anything, just simply pulls away, aren't you going to put these health practitioners through unbelievable hoops? This is what we complained about in their legislation.

Mrs Caplan: That's not the intention.

Mr Tilson: I know it's not your intention, but in effect that's what it's going to do.

Mrs Caplan: The intention is the opposite. What you've done is, under the legislation, you've given complete freedom from liability for all of the big stuff, the harmful stuff. For the excluded low-risk treatments, you've now brought in an amendment that allows them to opt into the legislation. All this says is, if the person is not objecting, you have no problem, but if they are objecting, maybe you should see if there's a substitute around or see if you're aware of the person's interests or get some direction before you proceed.

Mr Tilson: I feel there's going to be some low-risk activity that it just seems preposterous to get—

Mrs Caplan: But if it's low risk, there's no emergency. Why would you have an objection, when there's a low-risk procedure, to talking about it before you proceed to force someone?

Mr Tilson: Somewhere along the line surely you can't make these doctors—and as I say, I'll stick to the blood test; I don't know of any other simple example. That's about as simple a test as you could have or as simple a treatment as you could get. But with your phraseology, with due respect, if an incapable person objects—and objecting could be simply pulling away—then the doctor has got to do something, under your amendment. I think doctors are going to say, "Oh my goodness, they're going to be telling us how to practise medicine pretty soon."

Mrs Caplan: I think you're not taking the reality of what this would do. All this is intended to do is to give some consideration to an individual who is deemed incompetent and incapable and is objecting, to encourage some communication. You're not in an emergency situation; you're just saying, "Check out and make sure that's what's in the interests of the patient."

Mr Tilson: I know exactly what you mean now.

Mrs Caplan: I don't think it will fetter or encumber in any way the procedures and the treatments. It will encourage, as we heard time and again, the kind of discussion and communication between doctor and patient, or nurse and patient, that we know actually improves treatment. All it does is say that when someone is objecting, you have to have some discussion with them; that's all it is.

Mrs Boyd: I wonder if I could just get some clarification from Mrs Johns. I understood her to say that if this were accepted as a new section, talking about excluded treatment, it would mean that the common-law protection on these things was no longer there for people. Am I right?

Mrs Johns: Can I just get a legal opinion on that?

Ms Perun: The common law applies to things that are excluded from the definition of treatment. That's what we've basically said in section 7. So for the things that are left outside of the act, the common law applies, and the common law provides that you have to get consent; at least, there is a law saying it would be an assault to do something to someone.

What the Linda Bohnen amendment does, section 2.1, is allow a health practitioner to opt in to the legislation, essentially meaning that where the health practitioner decides to opt in to the legislation, the whole act would

apply, including ability to go to a substitute decider for permission for a low-risk procedure where the person is incapable and perhaps objecting to the procedure.

1540

Mrs Boyd: If I recall the conversation at the time we passed your amendment to section 7, the Bohnen amendment essentially said that if the doctor defines the treatment being given as being under section 2.1, then that's what you mean by opting in. In other words, they make that definition. If they don't define it within 2.1, then they are under the common law and any liability that may occur occurs under the common law as is usual. While I believe Mrs Caplan is quite right that the issue of liability is probably very low, given that you've already saved everybody from liability on anything that's a serious treatment, I'm not sure why anyone would win out of this amendment. I understand what it means. I'm just not sure, if I were in a position to advise someone, whether I would think that this was good or bad. It seems to me it's unnecessary.

The Chair: If there are no other comments, shall the amendment proposed by Mrs Caplan pass? All those in favour?

Mrs Caplan: Actually, I'm going to withdraw the amendment. While I think that it would be helpful and useful, I don't think it's going to pass. But more than that, I'm going to withdraw the amendment because I don't think that it achieves the purpose that I had hoped it would.

The Chair: This is a complex field and bill, Mrs Caplan.

Mrs Caplan: Yes, it is.

The Chair: Very much so.

If we can pass to section 10, there are no amendments suggested. I therefore would ask that section 10 shall pass as read. Any objections? Carried.

We're proceeding to section 11 and we have one amendment.

Mrs Boyd: I move that section 11 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Included consent

"11. Unless it is not reasonable to do so in the circumstances, a health practitioner is entitled to presume that consent to a treatment includes,

"(a) consent to variations or adjustments in the treatment, if,

"(i) before the consent was given, the health practitioner advised the person who gave the consent that the variations or adjustments were likely, and

"(ii) the nature, expected benefits, material risks and material side-effects of the changed treatment are not significantly different from the nature, expected benefits, material risks and material side-effects of the original treatment; and

"(b) consent to the continuation of the same treatment in a different setting, if,

"(i) before the consent was given, the health practitioner advised the person who gave the consent that the same treatment was likely to be continued in the different setting, and

"(ii) there is no significant change in the expected benefits, material risks or material side-effects of the treatment as a result of the change in the setting in which it is administered."

Just to give you the reasoning on this, variation in treatment was something we heard from a number of people as an element of fear in this bill. It was believed, although I think people understood the intentions of the government were to ensure that treatment was continued under changed circumstances—and I understand exactly why that would be so. We certainly heard a lot of fear that in fact people would be moved to other locations under this without their consent. I think we had a number of times when that was clarified for people. That was a real issue for a lot of people.

I have a different concern, and that is that when obtaining consent for a treatment, it's probably pretty important that physicians outline for the person making the decision, whether it's the individual themselves or a substitute decision-maker, "We will try this. If this doesn't work, we will go on to this, this and this," and that was certainly what was envisioned by the notion of a treatment plan in terms of the act.

I think the way 11 is worded, it gives permission to a physician not necessarily to present the full range of what may happen in terms of a treatment plan. In other words, they agree to something and then they make the assumption that if that isn't working, they can move to something similar if all these conditions apply. I think that's where the real problem comes in. I'd like to quote Judith Wahl from the Advocacy Centre for the Elderly, who spoke about this section. She said:

"These presumptions take away the right of a person to decide whether they want a variation of a treatment, such as a heavier or a lighter dose of a medication. They take away the right to decide whether a treatment appropriate in a hospital really should continue in a nursing home. Thus autonomy is undermined.

"These presumptions give too much authority to the health practitioner to assume that a treatment really is just a variation on something to which the person has consented, or that a person would just as soon have a treatment in one location or another."

I think that presentation to us really outlined what the concern with this is, that it gives a licence to, particularly, a physician, but frankly any health care practitioner, to make assumptions about consent to treatment that may not even have been implied when that consent was originally given. I think we need to think very seriously about the problem that was identified for us of what does happen when someone is on a treatment and moves to another location. I think that is a serious issue.

But that's a continuation of treatment in a different setting, where you would surely have some reason to assume that that removal might occur. This is exactly where the issue arose for, particularly, some of the mental health advocates whom we saw appear in front of us, that they would not want to see the possibility of their consent to treatment in a general hospital setting, for example, necessarily implying consent to removal to an Ontario psychiatric hospital with the same treatment. But the concern is there. I mean, that's what we kept hearing, and

we have only your word for it, frankly, that this is not what the situation would be.

Mrs Johns: As Mrs Boyd says, I have put this point of clarification on the record three or four times and I guess we're talking right now about 11(b) where in effect what's happening is that we're using the same treatment that someone is taking. Maybe what the act is saying is that the same treatment may continue in a different setting without the necessity of a new consent form. What Mrs Boyd is suggesting in her 11(b)(i) is the doctor has to tell a person that this medication will likely take them to another institution, a totally separate kind of ideology.

I don't want you just to take my word for how the act reads. I think we should hear from the ministry then. I've made that clarification and people's lights have gone on as I have said that, I believe. But let's get a clarification from legal counsel then if you don't think that's what it's saying, because I totally disagree with you on the intent of that section. So section 11, please.

Ms Perun: Basically all section 11(b) says is that a health practitioner is entitled to presume that consent to a treatment includes consent to the continuation of the same treatment in a different setting, if there is no significant change in the expected benefits, material risks or material side-effects of the treatment as a result of the change in the setting in which it is administered.

All we're dealing with here is taking the treatment and moving it with the person wherever they are. A treatment itself is not admission, and the legislation makes that clear in the definition of treatment, specifically excluding admission issues. "Treatment" is not the admission of a person to a hospital or other facility. So if there's some concern that once you consent to a treatment therefore you're also consenting to a change in setting, that is not the case, because treatment does not include the admission of the person who is excluded in clause (e) under the definition of treatment.

1550

Then section 22 of the legislation deals with admission itself, providing that where a person is incapable of a treatment decision, a substitute decider can consent to the person's admission for the purposes of that treatment. So again, section 22 separates the issue of admission and the issue of treatment and says that where a substitute decision-maker consents to a treatment on any capable person's behalf, that substitute may consent to the incapable person's admission to a hospital or a psych facility or to another health facility prescribed by the regs for the purpose of the treatment.

Section 22 makes clear that admission per se is not a treatment and that in fact these are two separate issues. So all that 11(b) attempts to achieve is to indicate that if, for example, someone comes into a hospital with their heart medication but they're being admitted for the treatment of a broken hip, that heart medication can continue. There should be no presumption that that should stop until a new consent is obtained. It's only the treatment that flows with the person, and 11(b) does not deal with permission to admit into a setting.

Mrs Boyd: May I ask another question? The issue that's raised by the Advocacy Centre for the Elderly also goes the other way and says whether a treatment that's

appropriate in a hospital would really be appropriate, for example, in a nursing home. Most nursing homes don't offer oxygen therapy. There are very specific ones that offer oxygen therapy. If, for example, someone were under a treatment and one of the ways in which they were persuaded to consent to that treatment was that if one of the side-effects were to be difficulty breathing—they are in an acute care hospital where oxygen is available and they agreed to that treatment on that condition, and then it was decided that they would go to a nursing home and oxygen wasn't necessarily available in that nursing home, which is more the rule than not—would it be appropriate for that to be deemed as consent for that treatment to continue, or does that change the issues?

I think the material risk may change, and that may be exactly the fail-safe we need. I just need a legal opinion as to whether that would solve the issue that was raised by the Advocacy Centre for the Elderly. I think it was more that way: moving from a hospital to a long-term-care facility and the difference in the emergency availability in a long-term-care centre with the same treatment. I think that was the concern that was being expressed, and we certainly heard others express that concern. They wanted that permission to change the location, particularly if the person were incapable, to keep the treatment going. If the person gave consent to the treatment and then became incapable, they wanted the ability to continue the treatment, if you understand what I mean.

Ms Perun: So the issue is if they move to a different setting and it's a different type of treatment that would—

Mrs Boyd: No, not a different type of treatment; just that there are different procedures available. No crash cart at most nursing homes, for example. There are different emergency procedures that are available in an acute care hospital than there are in a long-term-care facility. My question is: Do you think that issue is resolved by your provision around material risk? If it is, we'll withdraw the amendment.

Ms Perun: Again, it's very specific—it says if there is no significant change in the expected benefits, material risks or material side-effects. So again, if you change the venue to such an extent that the treatment does result in a change in the expected benefits and material risks, then you would have to get a new consent.

Mrs Boyd: You see, the problem is, if, for example, we take any medication—and there are many that are sedatives or painkillers that depress respirations—and people are taking them in a hospital where oxygen is available, so that if the respiration becomes depressed enough, oxygen is immediately available, if you give those people those same medications, move them to a facility where oxygen is not available, is it your opinion that that would change the material risk and that we ought not to worry about that?

Ms Perun: I would think so. I mean—

Mrs Johns: If you change the material risk so they would not be able to move that person as a result of that, correct? It's a legal opinion—

Mrs Boyd: This is a legal opinion I'm asking for, not a political opinion.

Ms Perun: How they get to move the person to a different location is outside the scope of this provision. Basically, other laws would have to apply. For example, the long-term-care legislation deals with admission to a nursing home and that kind of thing, so other laws would apply. All this says is that treatment, if it can be moved with the person, then you can presume that consent moves with the person. But the issue of admission is completely outside—

The Chair: Excuse me. The question has been asked twice and it's not a complicated question. I don't think you have an answer yet.

Mrs Boyd: No.

The Chair: It's simply that the example that was used was very simple. A person is getting some type of treatment and by moving them to a facility which does not have emergency provisions, for instance—could that be done and the same treatment continued or would that come under material risk in the section?

Ms Perun: Well, if it's not available in the next setting, this provision doesn't apply. If the treatment is not available in the other setting to which you're moving, this provision wouldn't apply.

The Chair: We're not talking about the treatment; we're talking about the facility, such as an emergency facility.

Mrs Boyd: Or alternatively, Mr Chair, I'm thinking of a situation where someone has emphysema. They also have cancer. A drug that's given to them to control the pain for the cancer depresses their respiration. They still need the morphine for the cancer pain. In many of these cases, someone would be moved home and in many of these cases, the current rules under OHIP do not allow for the paid provision of oxygen if people's uptake of oxygen is adequate according to the test that they happen to give at any particular time. So someone might, under this, move, especially if they were incapable, they weren't able to say anything or even if they were capable and they really wanted to go home. That would change, it seems to me, the material risk of this treatment and it would seem to me that you would need to renew your consent at that point.

All I'm asking is whether it is your opinion that that safeguard is here with material risk, whether that would be your opinion as well that that would change the material risk and, therefore, the person is protected. Because the real concern of many of the elderly is: They're in hospital; they're not quite acute enough to be in hospital; people are pressing them to move into long-term-care facilities or back home and they want to continue the same treatment because it's making them feel better. Can they be assured that this is going to make a requirement for the health care professional to take into account the difference of the setting in terms of the material risk of the treatment? If your opinion is yes, I withdraw the motion. If it's no, that you're not sure, then I think we need to talk a little bit more about how to make sure that safeguard is there.

Ms Perun: The answer is yes.

Mrs Boyd: Okay. I withdraw the motion.

The Chair: Congratulations.

Mrs Johns: Thank you for probing.

Mrs Boyd: And now it's on the record.

The Chair: The motion is withdrawn and I'll now ask whether section 11 as unamended shall pass. All those in favour? Opposed? None. Carried.

Moving on to section 12, and we have a proposed amendment on page 100 by Mrs Boyd.

Mrs Boyd: I move that section 12 of the Health Care Consent Act, 1995, as set out in schedule A to that bill, be amended by adding the following subsections:

"Consent on a person's behalf

"(2) A person may not give consent to a plan of treatment on behalf of another person if the person is incapable with respect to the plan of treatment as a whole but is capable with respect to any treatment that is part of the plan of treatment.

"Right to speak to a practitioner

"(3) If consent to a plan of treatment is given on a person's behalf, the person has a right to speak to any health practitioner who administers the treatment that is part of the plan of treatment."

Mrs Johns: May I ask a question? I would ask permission to stand this down, and I'll just tell you why. I'm going to ask, when we come back, to split it also because we believe that you've raised an important point in section 2 that may be eliminated in the act. We've caught it just today as we've been going through one more time to look at them. We believe that anybody has the right to speak to a practitioner and so we're not as—but we would like to look at this overnight and then talk about it tomorrow.

1600

Mrs Boyd: I'd be very happy to stand it down.

The Chair: Do we have unanimous consent that this matter stand down? Thank you. Section 12 will also be stood down for the consideration of that amendment.

Proceeding now to section 13, shall section 13 pass? All those in favour? Opposed, if any? Carried.

Section 14, no proposed amendments. Shall this section carry? Any opposition? Carried.

Section 15, no proposed amendments. Shall this section carry? Carried.

We have a new section 15.1. There are three in all. The first one is proposed by the government.

Mrs Johns: I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"Information

"15.1 A health practitioner shall, in the circumstances and manner specified in guidelines established by the governing body of the health practitioner's profession, provide to persons found by the health practitioner to be incapable with respect to treatment such information about the consequences of the findings as is specified in the guidelines."

As we have heard from the time the minister opened our discussions four weeks ago, there was a concern that we had to look at rights advice and the ability to let people know that they are viewed as being incapable. We have listened to a number of people and there have been very opposing views about how we should provide this.

To go over some of the arguments, the CPSO on February 6 said: "It needs to have the latitude of being

outside regulations. We can produce very strong guidelines for our members on this topic."

Linda Bohnen said: "I agree with you 100% that there need to be guidelines and that health professionals need to be coached, educated and encouraged to provide rights notification and information. My only quarrel is that I don't think writing a section in this legislation is the way to produce that result. I think there are better, more effective ways of achieving that result."

The Hospital for Sick Children said: "I might add that many of our staff feel strongly about the importance of patients being informed about their rights when genuine conflict occurs and plan to consider developing a policy in the hospital regarding this manner. I might also add that most of us who are guided by our professional ethics feel equally strongly that this is something...to which we are bound by our ethical guidelines under which we practice. We support the removal of the rights advice process from the legislation."

The OMA, when Mr Klees asked if they would be in favour of or opposed to legislation requiring the colleges to establish the guidelines and to enforce them, answered they would be in favour of the college being involved rather than it being mandatory under the act, and that they had no objection to a legislative requirement for the colleges to provide those guidelines.

The Ad Hoc Coalition on February 8 said: "As a coalition we haven't worked out a full description of rights advice, but as a group we tend to agree that it ought not to be in legislation, that it should be viewed as a matter for professional regulation and judgement and that the various colleges could perhaps do something with it."

The Ontario College of Family Physicians said they certainly need to be informed that there's something needed, "but I don't think you need to go into a long documentation that doesn't assist in understanding anything."

The Ontario general hospitals, in answer to a question from Mrs Caplan, Ms Davies said she would be "comfortable with allowing the professional colleges to establish the guidelines or the protocols for how that would be achieved where there is a professional college as long as there is consistency among the colleges."

The Roman Catholic Archdiocese of Toronto said: "As far as people are capable of receiving that information and being able to act upon that information, it's a moral obligation to give it to them. The process can be worked out, but there has to be some kind of process there for them to be able to maintain effectively that which is central to human dignity."

As a result of those deputants and as a result of our talks in caucus about what we believe should happen, we have decided that we need to put this in the legislation so that people would know we were concerned about people who are viewed as incapable.

On top of that, we sent a letter to all the colleges. I hope you have a copy; I gave it out last Thursday. We sent them to all the colleges, but the one I gave out was addressed to Michael Dixon, with the College of Physicians and Surgeons. The ministry has asked in that letter:

"The government is intending to revoke the Consent to Treatment Act and replace it with a new substitute called the Health Care Consent Act. This new statute is schedule A of Bill 19, the Advocacy, Consent and Substitute Decisions Statute Law Amendment Act. We have been holding hearings on this legislation before the administration of justice committee.

"One of the issues raised before the committee is when and how a patient or client who would have been determined by a health practitioner to be incapable of consenting to treatment should be notified of the consequence of the findings of incapacity, including the right of review.

"It has always been the government's view that the existing rights notification provisions in the CTA are overly repetitive, bureaucratic and adversarial. The HCCA does not contain statutory requirements for rights notification. The government is proposing an amendment to part II of the Health Care Consent Act that links information given to incapable persons to college guidelines. In leaving these requirements to college policy, the government has sent a strong message to health professionals that we believe actual and appropriate discussions with incapable patients or clients about consequences of incapacity findings cannot be legislated. Rather, we believe that the professional colleges must set their own peer standards and that colleges will in effect give appropriate guidance to their members.

"This government would prefer that each professional college develop guidelines for its members in providing appropriate information to persons determined to be incapable under part II of the HCCA.

"I am asking for your cooperation in this connection. Please provide the ministry's professional relations branch with a copy of your intended guidelines by April 1. While Bill 19 is not at the point of proclamation, it will in fact be finalized shortly. For the purpose of your intended guidelines, you may assume that the fundamental principles of the HCCA will remain intact.

"Should you require further information, please contact" Halyna at the legal services branch.

The ministry has written to the colleges. These all went out last week. We anticipate that the colleges will do as requested without the necessity of using the powers in section 5 of the RHPA. However, the ministry, as you all are aware, does have the authority under that section to enforce this request, and will do so if necessary.

The Chair: Thank you, Mrs Johns. I think it's fair to say that this is one of the more important issues in this bill we're discussing, so Mrs Caplan and then Mrs Boyd.

Mrs Caplan: I'm not going to read all the presentations that came before the committee, but I did ask legislative research to do a summary, and this only takes us up until—well, I'll read the memo, and it was excellent research. It says:

"This memo examines the committee hearings from February 6 to February 13 inclusive, during which time the committee heard from 70 witnesses. The committee hearings on February 5 were excluded because no public witnesses were heard. However, hearings from February 13 to the end of the public hearings on February 22 were not included because Hansard was not yet available."

So this takes in about half the public hearings. There were two questions I asked of research. I'm going to deal with the second question, that is, whether witnesses agreed or disagreed with the statement that "there should be a statutory duty for health care workers to advise incapable persons that they had been found incapable and that they had a right to appeal that finding."

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This is the research that was done, and we've heard Mrs Johns read some of it into the record, but what she neglected to read in was the other side, composed of 78% of the presenters before the committee. Thirty-six of the 70 witnesses were in agreement with the need for statutory duty to advise, and the 10 witnesses, or 22%, who disagreed argued as Mrs Johns just has. You presented the view of less than one quarter of those who came forward, and when Hansard is reviewed and research does the second week I think we'll see the same pattern emerge. Three quarters, in fact better than three quarters, of the presentations before this committee asked for a clear statutory obligation.

We have an amendment to a different section, but I'm going to read it into the record at this time because I guess you could put it up at this point. I'd like you to hear what we're proposing because it's not really in conflict with what you've said, although when you read the amendment you've put forward under "Information," it doesn't say anything about an obligation to inform and it isn't clear.

The one I am going to read into the record, which I thought was the most succinct and clearest of all the presentations, came from one of the colleges. While it is true that the College of Physicians and Surgeons; the Hospital for Sick Children; Linda Bohnen, who is a lawyer representing the professional colleges; the psychiatric association; the Ad Hoc Coalition on Consent, Substitute Decisions and Advocacy; St Joseph Moscati Toronto Catholic Doctors' Guild; the Ontario Medical Association; another solicitor, Earl Atnikov; and Ottawa General Hospital—that's the list of 10 during that week that were identified by research as saying no to a statutory obligation. They were 10 out of 70.

The other 36 agreed with this view. This is the view of another college, the Royal College of Dental Surgeons of Ontario. They said very simply, "In order to alleviate uncertainty in this regard, the college would propose that a specific provision be included in the legislation setting out exactly what is required of the health practitioner."

That sums up what three quarters of the presenters suggested. We have no objection; in fact, my preference is that it is the colleges that do this, but I think we have to be clear in the legislation about what it is we want to oblige them to do. What we've proposed, under section 82.1 of the Health Care Consent Act, is:

"Obligation to inform

"82.1 (1) If a health practitioner or an evaluator finds, in accordance with this act, that a person is incapable with respect to a decision, the health practitioner or evaluator shall inform the person of his or her rights with respect to that decision and any rights to appeal,

"(a) as required by the guidelines established by his or her college, if he or she is a member of college referred

to in any of clauses (a) to (r)"—that's the health professions legislation—"of the definition of 'health practitioner' in subsection 2(1); or

"(b) in accordance with regulations otherwise."

That would cover the social workers and any others you would permit. It gives you the reg-making ability to set out the guidelines, or the use of the ACE evaluation if you chose to do that, and that would be acceptable to us.

"Same

"(2) For the purpose of subsection (1), each of the colleges referred to in clauses (a) to (r) of the definition of 'health practitioner' in subsection 2(1) shall establish and publish guidelines governing the responsibilities of its members under subsection (1)."

The difference between what I've just read out and the government's amendment entitled "Information" is that it would specify in the heading on the side, if anybody were looking for a notation, this would say "Obligation to inform," as opposed to "Information."

One of the concerns with this legislation, and a concern that has been raised consistently, is that it is complicated. Somebody is going to open up the legislation and they're going to say: "What's my obligation? What's the obligation of rights advice or information being given? What's the obligation? Is there an obligation?" Nowhere in the annotated notes would it say "obligation," because your information section, listed under section 15.1, as you've got it here, says "Information." While I think it hopes to achieve the intent, I don't think it's clear enough. In fact, it's very fuzzy, and because of its fuzziness, it's ineffective.

I support the intent of it but I'd ask you to consider wording such as we have suggested. If you wish, let's stand this down, take a look at the wording we proposed under 82.1. If you'd rather move it up into an earlier section, we have no objection, as long as there's someplace where there is "Obligation to inform" as opposed to simply "Information." Nobody will know what "Information" means.

We were very cautious in the drafting of our amendment to leave it in the hands of the colleges where there is an evaluator who is a member of a college. But our amendment also captures those who would be evaluators and allow you to set the guidelines by regulation for those given that power by your regulation who are not members of regulatory colleges under the health professions legislation.

I think this is a reasonable request. All we're asking is for clarity. We're asking you to listen to the 78% of presenters who came forward and said: "Be clear about this. Put the obligation in the statute. Let the colleges come up with the guidelines and do their thing, but be clear about it." With all due respect to the legislative draftsmen, your section is mush. It's meaningless. It's not clear. Nobody would understand it. And in its mushiness, it doesn't serve anybody's interests well, including yours, which I believe is a sincere desire, Mrs Johns, to respond to the 78% who came forward and said, "Put something in the statute," and the 22% who said, "Leave it to the colleges." We think both can be accomplished and you

can still have clarity in the legislation, and that's what we're asking for.

I would rather not be put in the position of having to vote against this in the hope that maybe you'll do something further on, because I don't think this is clear enough. I'm asking you to reconsider the wording of this so it's actually clear what you're expecting the colleges to do. I think that's a reasonable request.

I would move that this be stood down so that the government could look at the amendment we put forward on page 189 to see if the language could be incorporated so that the obligation to inform is clear, but to do it in such a way that it's left entirely to the colleges or to the government where there is no college.

The Chair: Is there unanimous consent for the request for deferral?

Mrs Johns: No.

The Chair: No? If not, Mrs Boyd.

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Mrs Boyd: Obviously, we don't believe this is strong enough, clear enough, and certainly not that it avoids all the issues around conflict of interest that were raised again and again and again around the issue of the health care practitioner who's making the finding being the one who's responsible.

I would like some definitions here. I see nothing in your amendment that actually says the health care professional must inform the person that they're incapable. In other words, you're saying you're going to leave it up to the colleges to decide whether a health care professional actually has to provide that information to the incapable person.

Then, I don't know what you mean by "such information about the consequences of the findings as is specified in the guidelines." I don't know whether that implies that the health care professionals are being required to explain that there is an appeal procedure, a review procedure of that. It doesn't say that. "Such information about the consequences of the findings as is specified by the guidelines"—talk about a pig in a poke. This is exactly what presenter after presenter asked you not to do: not to leave everybody hanging out there not knowing what information was required or how it was to be provided.

Mrs Caplan already talked about the numerous groups that applied. We see a terrific split in these groups, for the most part, between advocates and consumer-oriented groups and doctors. Even then, in the groups that opposed this, we heard significant comment, particularly from psychiatrists—which was very interesting, because of course psychiatrists operate under the Mental Health Act and have for 10 years, where rights advice is a part of that act and is very necessary. The psychiatrists were saying, "Of course it's part of your practice to tell the person and to make sure they know they have a right of appeal," because they've been required to do it all that time. It was the others, the ones who aren't required to do it, who say, "Oh my goodness, we couldn't do this; this would interrupt our doctor-patient relationship," which is nonsense, absolute nonsense.

Given what we heard from the OMA, I think your faith in their willingness and ability to respect the rights and the right to information of patients is remarkable. They

begged you not to make them responsible for telling patients, begged you not to put that on them, but they equally said: "Don't have somebody else do it. We don't want anybody interfering with us." What they said again and again by implication is that it isn't important for the incapable person to have this information, yet you're prepared to trust them to decide what information will be given, how it will be given and to what extent the consequences will be explained.

What you are doing is giving an absolute free rein, and it makes the Health Care Consent Act meaningless, absolutely meaningless, because it basically says any health care professional can find someone incapable and they don't have to tell them and don't have to explain to them that they have any recourse to that decision, and they don't have any recourse around the consequences under this kind of situation. All the very worst fears of the vast majority of people who appeared in front of us you have just embodied in this, and some of those fears were on the part of the health professionals themselves, who understood the difficulty represented in trying to make these determinations. In the OMA, for example, there will be a huge difference of opinion between those physicians who have willingly accepted the provisions in the Mental Health Act and those who have not. You are simply throwing this back to all those people.

We have already agreed that the Mirandizing aspect of the way it was done under the Consent to Treatment Act wasn't the appropriate way. We tried to point out that doctors made that the way because they weren't prepared to actually have a patient-doctor relationship; they were prepared to give an example of why governments can't intervene and require them to do anything. They did, and we heard it read out the way a lot of doctors read it out, which I found extraordinarily offensive and I think most patients would find extraordinarily offensive.

That was a suggested form, "These are the points you must do." I agree that probably should never have been provided in that way, but frankly, we were so naïve that we thought doctors would want to make sure that the advice they were giving patients was appropriate, and not in that format. We were wrong.

You now are saying you're going to pass this act and you've written a nice letter asking them to come up with this. You're saying, "If they don't, the minister has in his back pocket the ability to require them to do it, but we're just going to let them have their own way yet again"—exactly what Dr Singer said you should do. Dr Singer said, "You can't control the docs, so you'd better not try. Just let them do their own thing," and that's exactly what you've done.

I'm terribly disappointed. I can just imagine how disappointed the people are who really thought you were concerned about the rights of the incapable and your assurances to them that their rights would be respected even though you were doing away with the Advocacy Act and the Advocacy Commission and rights advisers.

We certainly will be voting against this amendment, and we will not confine ourselves to talking about rights advice by just allowing all the rest of our amendments to drop. It's too important. I think we're here for quite a long time.

Mrs Caplan: At the beginning of this process I heard both—actually all three—of the ministers who have substantive amendments to the legislation saying they were going to be listening to what people said and that they were seeing this as a non-partisan process. Frankly, I feel we've all been here with an attempt to respond to the concerns.

I don't see this as an issue of control. The legislation you brought in in the area of consent to treatment I think substantially improves that which was in place. There were serious flaws. Some were just genuinely misguided, and I hear what Mrs Boyd has to say and I'm sympathetic. However, this isn't an issue of control. This is an issue that I asked of the deputations that came forward, the presenters, because it's fundamental.

What you're doing with this legislation is removing any obligation by anyone to tell someone when they have been found unable to understand and appreciate the consequences of a treatment. That is the definition of incapacity. You have removed any obligation to tell them of that finding and you have removed any obligation to notify them that they have a right to make an application to the Consent and Capacity Board, and you give to the people making that finding of incapacity freedom from any liability when they proceed with treatment.

Again, 78% of the deputations and presenters who came before this committee said that was wrong, that it was reasonable to have a minimalist obligation. Some will say that our proposal is too minimalist, because it clearly states that there is an obligation to inform; that's all that we're asking for.

I can tell you something. If you're not prepared to accept a change to your amendment on page 101—when you read it, nobody can understand what that means. "A health practitioner shall, in the circumstances"—what circumstances?—"and manner specified in guidelines established by the governing body of the health practitioner's profession, provide to persons found by the health practitioner to be incapable with respect to treatment such information about the consequences of the findings as is specified in the guidelines."

That is one sentence. It is so convoluted that it is unclear what it means, and I think that's unfair to the practitioner, it's unfair to the colleges that will draft the guidelines, and it is unfair mostly to the people who will be impacted because of the fact that it is so unclear.

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The only thing that you've been asked to do and that is central to this legislative change you're making is to protect people by making sure they know when they have been found incapable. I disagree with Mrs Boyd when she uses the word "control." This is not about control, this is not about interfering in relationships; this is saying to someone who has enormous power to declare someone incapable and impose treatment on them—and they have that right in this legislation, free from any liability—there's a clear statement in this legislation that you have an obligation to let somebody know what's going on.

We're prepared to leave it to the colleges to come up with the protocol for how to do that, but I don't understand the reluctance to amend the legislation in a way so that people can understand what it means. I read this

under the heading of "Information" and I said, "What does this mean?" How is this going to be followed by the colleges in any kind of consistent way and how is it going to tell someone who picks up this legislation that there is an obligation under the legislation which is the tradeoff, the balance to the freedom from liability that is being given?

I don't understand what your problem is with putting something in that's clear. It's not in any way negative. It's not in any way controlling. It leaves to the professional colleges the ability to set out those guidelines and protocols, but it does clearly state that there's an obligation. What's wrong with having a statement that was requested by some of the colleges, including the Royal College of Dental Surgeons of Ontario for one, that was requested by 78% of the presenters before this committee? Why are you saying no to all of them? That is my question.

The Chair: That must be a rhetorical question, I assume.

Mrs Caplan: I'm hoping there's an answer. I don't understand why you're saying no. They've asked for a statutory obligation—

The Chair: Mrs Caplan, you were out of the room when I expressed my somewhat concern that individuals in this committee room say, "I cannot understand why you do not agree with my position," and that is basically the question.

Mrs Caplan: No. That's not what I'm saying, Mr Chairman. What I'm saying is, I don't—

The Chair: Excuse me, Mrs Caplan. Let me finish first. The questions properly directed to the PAs are for clarification, legal opinions etc, not to determine why they disagree with your position. I don't think that's a proper question, it consists of cross-examination and I won't permit it.

Mrs Caplan: Thank you very much, Mr Chairman. What I'm asking is for an explanation from the parliamentary assistants on behalf of the ministers why they rejected a request that was made not by me but by 78% of the presenters who came before this committee.

Mr Marchese: That's a good point.

Mrs Caplan: That's my question.

Mrs Boyd: Since they said they would listen.

Mrs Caplan: Since they said they would listen to them. That's the question.

The Chair: I'm not going to make a formal ruling, but I assume you will not answer that question, Mrs Johns.

Mr Marchese: He's directing you.

The Chair: No. I have no authority to direct Mrs Johns.

Mrs Johns: I don't think I can add anything to that question.

The Chair: Thank you.

Mrs Caplan: In that response, Mr Chairman, the next question I have is, is the government prepared to consider in a positive way any of the amendments that have been put forward by either of the opposition parties?

Interjection: No, they're not.

Mrs Caplan: Are you willing to accept any of the amendments that we've put forward?

Mr Tilson: Just say we have been. There are some amendments that we've agreed to.

Mrs Caplan: From this point on—you've had a chance to look at them—are you accepting any of the amendments that we've put forward?

Mr Tilson: We want to hear what you have to say, and hopefully it'll be brief.

Mr Marchese: That's very helpful.

Mrs Johns: I'm not prepared to discuss what we're going to approve and not approve in the future. I can speak to this amendment and to section 15.1. Our caucus has had substantial discussions on this. We believe that this takes in, as I said previously, the beliefs held by people who came to the hearings plus the ministry's and the minister's opinions, so we believe in section 15.1 that our amendment is the one that we like the best.

Mr Marchese: I know what this motion means. I suspected that would be the kind of thing you would come up with and I understand why you're doing this. You're opposed to rights advice and you're opposed to notification of rights. That was clear. You might say no, but from everything we've heard you say and do in committee, you really are opposed to that. You've gotten rid of the rights advisers because "they're intrusive, not necessary and we've got systems in place to deal with it." Because you're opposed to that but you're looking for a way to appear to be responding to what all of these groups have said, you've come up with this kind of wording.

Who do you go to for advice on this? To the doctors. So you're saying, "We'll let the doctors establish guidelines." What will those guidelines say? "We can't tell you, but we'll let them do it." But if you recall, and I know you recall this very well, the doctors didn't want to do this, don't want to do it, but if you force them to: "All right. We'll establish some guidelines if you as a government believe that we need to do it."

That's really what's happening here. Doctors came in front of this committee and said: "This matter of rights notification is really a legal matter. It's not a doctors' matter. We disagreed with that." They also said, "This really hurts our patient-doctor relationship." We don't think so, but that's what the doctors said.

Then one interesting nurse—I forget who she was—read out the form in such a way, the Mirandizing way of doing it, that really frightened all of us. We agreed that if that's the way you present rights notification, it's a problem. We were all offended by the way she read it, and she read it in such a way that we would be offended and she had a good effect on us all. We didn't want people to read in that way. We wanted to have doctors speak to the issues of rights notification in a way that is good for doctors and is good for patients. But they resisted. They said, "No, this is really bad." All of you will agree that most of the doctors who came in front of us—

Mr Tilson: Not all.

Mr Marchese: That's why I said most said: "This is not good for us. Rights notification is really not good for our patient-doctor relationship." So you go to the very people who are opposed to it to establish guidelines. What do the guidelines say? "We don't really know, we

don't really care, we're just going to tell them to do it and each institution will do it." That's what it says, right?

Mrs Boyd: Each college.

Mr Marchese: Sorry. Each college.

Mrs Johns: It would be reviewed by the legal branch—on the last page.

Mrs Boyd: That's your note, not ours.

Mrs Johns: "I'm asking for your cooperation. Please provide the professional relations branch with a copy of the intended guidelines."

Mr Marchese: Of course, you will ask them for the guidelines. I understand that, but the point is that you are relying on the colleges to come up with these guidelines, which you will probably agree to, because are you going to write back to them saying: "This is really not good enough. The groups that are opposed to this really don't think that's just good enough"? You're just going to say, "Thanks for the copy." You're going to have it in hand and you'll tell the groups, "We've done this, they're guidelines and everybody's happy." Well, they're not.

That's really the problem we have, and I want to read for the record what a number of groups have said, and there's quite a number. For the purposes of Hansard, it's page 46 of the final summary that was compiled by our research people.

The organization NLS says to establish a new section 16(2.1), which would say:

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"The health practitioner, after finding that the person is incapable with respect to a treatment, shall ensure that the person is given written notice of the finding; the notice (which may be in prescribed form) shall indicate that the person is entitled as a party to representation and has a right to legal services."

Then we have a whole list of organizations. There are 13 that have said the following:

"The act should impose an obligation on the health care practitioner to inform the patient of a determination of incapacity, the effect it will have on treatment and the patient's right to a hearing by the Consent and Capacity Board. If a hearing is requested, health care providers should also be required to provide the board application form, to assist in its completion and to promptly send it to the board."

ARCH says the following:

"The elimination of the obligation to inform a person that they have been found incapable and the elimination of access to independent rights advice for those who have been found incapable might violate the right to life, liberty and security of person, as guaranteed in section 7 of the Canadian Charter of Rights and Freedoms."

Then there are four other organizations that say the following:

"The act should maintain the system of formal rights advice. If it is to be eliminated, however, the act should require that the health practitioner must inform the person of the finding of incapacity, the right to apply to the Consent and Capacity Board for a review of the finding, and the procedure to make application."

Another organization says the following:

"Stipulate that health care practitioners are required to inform the patient of a finding of incapacity. The rights

adviser should be responsible for informing the person of the right and process to appeal to the board. The existing legislation was too cumbersome and there should be greater latitude in how to advise the person."

There are four other organizations to say the following:

"Patients found to be incapable by a health practitioner should be entitled to rights advice."

Two other organizations have said the following:

"Stipulate that individuals must be informed of the right to refuse an assessment, of a finding of incapacity and of the right to appeal. This could be accomplished by requiring that any certificate of incapacity issued by an assessor be accompanied by a document outlining in clear and simple terms the rights that the person has to appeal the assessment and the procedures to be followed."

They all have something in common here. I'm not quite sure that these people got together, coming from all over the province, and said, "Let's write the same thing." They don't do that. Their opinions are rooted in the experiences of dealing with people who are vulnerable.

So again I ask you the question, from whom are you getting advice about these issues? If you're not listening to the people in the field, you're not listening. You can pretend you are. You can say there should be some guidelines and that the colleges should do it because that's an easy way out, but you're really running away from the issue. You really are not responding to what people have said.

There is no obligation whatsoever in here to inform. There is none. You don't instruct the colleges, in fact, of that very basic principle. If you're going to have them establish guidelines, please tell them the kinds of things you want them to establish guidelines around so that there's a basis for those guidelines.

If one of them is a right or an obligation to inform, then that's clear and the guidelines will be clearly written around that. But you haven't even instructed them around that particular issue and that worries me. It worries me, because I have heard the doctors come in front of this committee who said, "We don't think this is good," that the colleges that will respect the opinions of those individuals will not write something that will contradict or say anything contrary to what the doctors told us in committee.

We have a serious problem here. We agree with the countless groups about the obligation to inform, and you're taking that away, and through the guidelines there's no clarity; that is for certain. I know what it means. I know you're running away from the issue. That's what it means. But there's certainly no clarity; there's certainly nothing around obligation to inform, and by leaving it to the colleges we are making a big, big mistake.

What my colleague was saying earlier about control was that you're putting, again, power to the doctors, and power is control. That's what I think my colleague was getting at. That's what it means. When you leave that kind of power to doctors, then you control what they say and what they do, and if you don't tell them that rights notification or obligation to inform is important, they're not going to do it, because they told us they don't want to do it. So, my friends, you haven't been listening to the

groups that are rooted in communities and rooted in defending vulnerable people.

This motion we can't accept as a reasonable compromise to the position you as a government want to introduce. This is not a compromise. It's not even a compromise. And I know you won't think about it, but all I want to do through these comments is to let those who are watching know you're not fooling us, you're not fooling those communities that came in front of this committee and the obligation to inform is not here. I hope that the people who are watching will call us or will call you to let you know that they disagree with you or that they agree with us, but this we can't accept.

Mr Ramsay: Have you got a number? Give our phone number out.

Mr Marchese: They'll find us. They'll find them too.

Mr Michael Brown: I find this amendment to be extraordinarily interesting and probably an example of politics at its absolute worst. I say that from the perspective that if you look at what are you really trying to do here, I guess if I'm the government, I'm saying: "Well, I want to tell those groups that we did something about this rights stuff. Something had to be done about this rights stuff. See, we did something about it." At the very same time, you're saying to the professions: "Look, we did absolutely nothing. This really doesn't require much of anything and we'll just smooth this by. It's written in such a way that nobody will really understand what it means and everything will be okay." What I think you've done and why it's politics at its worst is you won't have satisfied either group.

We're talking about the most basic rights people have: the right to make decisions on their own behalf, the right to consent on their own behalf. There's nothing more important to anyone in the democratic, the British tradition than those kind of rights. I would say to you I think we've taken many of the common-law rights that people and the British parliamentary systems have had forever, and you're busily destroying them.

You have accomplished exactly the opposite, because I could maybe live with this if there was actual liability for your actions. You've got to remember you've taken all the liability out of this. There is no liability in any real sense to anyone who's making these decisions. I can hardly understand how anybody would be found liable under this legislation for not doing what the legislation suggests.

Given the fact that recourse to the courts, which is a fundamental right of people in democracies, and particularly—and I think this is our tradition, the British tradition of common law—this is particularly offensive because it is the most basic right we have.

That's what you're doing, and all we're saying here is, let's have some clarity. Make it clear what it is that you are requiring, and I think there are some valuable suggestions being put forward on how this could be done. No one wants the confrontational point, a way that it has been suggested that under the prior legislation it was happening. It's definitely not the way to go.

But I'm suggesting to you, if you're going to do this, put the liability back in. Don't save everybody from liability. Let the courts decide this, David. If that's what

it's about, don't take the rights of British—well, we're not British subjects and haven't been for a long time. But the due process of common law, what ordinarily could've happened without this kind of legislation, you've taken that away and substituted something for it that I would suggest to you is basically meaningless.

I'm appalled. And I really can't say much more than that. Just try to rethink this. Or, if you can't, let's go to the tort system and let's work it out. But don't vote all rights away. That's essentially what I think is happening here.

1650

Mrs Boyd: One of the real problems with what you're doing is that those within the health care professions who came before us and said rights advice was good are going to be just as disappointed as the consumers who came and said they needed rights advice in order to feel safe.

I would remind the government members that we had people come in front of us who talked about how they thought it would be better for there to be no Substitute Decisions Act, no Health Care Consent Act, if there weren't advocates, because without an assurance that due process would be followed, that in fact people's rights would be respected under those pieces of legislation, it would be meaningless to them and it would be very dangerous for them to agree to anyone else making decisions on their behalf and it would be foolish for them to agree that it was wise to have any bill that facilitated substitute decision-making.

I'd like to make it clear that every health professional who came in front of us was not in the same position as the OMA, for example, or Dr Singer. There were many health care professionals who came in front of us talking about the need for that independent rights advice. They did say, many of those health care professionals—not the nurses, but many of the physicians—that it should be independent, that they shouldn't be responsible for that, that in fact it just needed to be done in a different way. But there were others who came before us saying they didn't find any problem in terms of rights advice under the old act and they weren't quite sure what their colleagues were talking about.

We have a bunch of letters that were given to us by the rights adviser in Windsor, for example, which she referred us to but which weren't read into the record. I'm going to read some of those into the record, because I think it's important for us to know that there was a countervailing opinion on the part of health care professionals working under the Advocacy Act who found it helpful, who found it very, very significant in their relationship with their patients, not negative.

The first one I'd like to read is from Mary Lou Dolan, who's a registered nurse, and who is a registered nurse who's in charge of a psychiatric unit at a general hospital. Remember, only in Ontario psychiatric hospitals are the patient advocates available. So this was a situation where under the Mental Health Act people were required to have rights advice but there wasn't anybody there from the PPAO. This is what she says:

"Dear Committee Members:

"Since the proclamation of the Consent to Treatment Act last year, we have been very pleased with how efficiently this service for our patients has been running.

There is no delay between when we notify the Ontario Advocacy Commission and when patients are seen by the rights adviser. The rights advisers have been very helpful and compassionate with our patients and take as much time as is needed to make sure the patient is properly informed of their rights.

"Our present government is now wanting to dismantle this service. As a health care professional working with psychiatric patients, I find this unacceptable. Many of our patients are unaware of their rights provided by the Mental Health Act. The rights advisers provide this service, and I am sure this service is provided at a much lower fee than when legal aid did this service." Of course, because of the compulsory nature under the Mental Health Act, legal aid is provided for under that act.

"Large amounts of tax dollars were used to educate and inform the legal and health communities of the Consent to Treatment Act. This system seems to be running smoothly now and the act is doing what it was proclaimed to do. If it's not broke, why fix it?"

From Ron Frisch, who is a PhD and a clinical psychologist and a consulting psychologist, again in Windsor:

"As a health care provider and teacher in the mental health field, I'm most distressed at the proposed changes to the Consent to Treatment Act, the Substitute Decisions Act and the Advocacy Act.

"Incomplete consultation has taken place in regard to the effects of the changes proposed under Bill 19. The drastic changes contemplated by Bill 19 will affect the most vulnerable members of our society. This represents a step backwards from the many years of efforts made to ensure the rights of those people with reduced ability in representing their needs for care and decision-making.

"I urge you to do your utmost in delaying the imposition of these regressive acts. There may be creative and innovative ways of budget reductions that do not destroy the health and wellbeing of our citizens."

From someone who's a unit manager in a psychiatric hospital, Windsor regional hospital, Harish Carpenter:

"The service provided by the Advocacy Commission rights adviser is not only beneficial but essential to our community in regard to the education and supportive information given to the patients and health team worker. We have noticed since the implementation of the Advocacy Commission rights adviser that response time concerning hospital visits have become prompt and we, the health team workers, receive more feedback concerning said patients. The patients appreciate the thoroughness of the rights adviser in the explanations concerning their rights. The patients can then effectively make a decision concerning his or her treatment," and it goes on and on.

There are many, many more, and we may have an opportunity to hear some of them as time goes on, because this issue of basic rights advice and the key concern that it has in terms of making these acts work is important. I understand that we need to have the subcommittee report from the meeting that the subcommittee had at noon before we close at 5 today, so I will stop talking at this point, but I have a good deal more to say on this particular amendment and I don't think the discussion of this amendment is complete, Mr Chair.

The Chair: Do you wish to continue your presentation in regard to this section tomorrow?

Mrs Boyd: I do.

The Chair: The subcommittee met and all three caucuses agreed to use their best efforts to complete this bill by Thursday, and I mean this all in good faith, Mrs Boyd, but you indicated earlier on the record that for some reason, if this section may pass, and that may not be possible?

Mrs Boyd: I didn't say that, Mr Chair. I said I wasn't finished speaking to this amendment, and there are other amendments that have been brought forward in this section. I didn't say that at all. I'm not convinced that we have had a thorough discussion of the implications of this amendment and so I'm not prepared to pass it at this point. I think we need to have more discussion.

The Chair: Just in that regard, legislative counsel has assisted me, and she is of the opinion that the two other amendments proposed by the Liberals and the NDP are in order and are complementary to the government amendment, if it so passes.

Mrs Caplan: What does that mean?

The Chair: It simply means that they're open for debate in the order they're listed.

The subcommittee met and agreed that the continuation of the clause-by-clause on Wednesday and Thursday of this week would be for the hours of 10 am to 12 noon and 1 pm to 5 pm, and in addition that a presenter earlier before the committee be reimbursed for their travelling expenses, as the subcommittee approved same. I would ask for approval of the subcommittee report.

Mr Marchese: I move that, Mr Chairman.

The Chair: Thank you.

Mr Tilson: The report also includes, Mr Chair, that these hearings would be concluded on Thursday, as was agreed to by the three House leaders. I think that should be in the report, because that was certainly part of what our agreement was.

The Chair: It's certainly on Hansard at this moment.

Mrs Boyd: The expectation that that would happen is certainly there.

The Chair: Do I have approval of the subcommittee's report? All those in favour? Agreed.

We are now adjourned to 10 am tomorrow in this room, 151.

The committee adjourned at 1659.

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- *Ramsay, David (Timiskaming L)
- *Tilson, David (Dufferin-Peel PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Boushy, Dave (Sarnia PC) for Mr Ron Johnson
Brown, Michael A. (Algoma-Manitoulin L) for Mr Chiarelli
Caplan, Elinor (Oriole L) for Mr Conway
Johns, Helen (Huron PC) for Mr Hudak
Marchese, Rosario (Fort York ND) for Mr Hampton
O'Toole, John R. (Durham East / -Est PC) for Mr Klees

Also taking part / Autres participants et participantes:

Stockwell, Chris (Etobicoke West / -Ouest PC)
Ministry of Health
 Burwash, Anna, senior policy adviser, program design
 Perun, Halyna, legal counsel

Clerk / Greffière: Bryce, Donna

Staff / Personnel: Gottheil, Joanne, legislative counsel

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Wednesday 28 February 1996

Journal des débats (Hansard)

Mercredi 28 février 1996

Standing committee on administration of justice

Advocacy, Consent
and Substitute Decisions
Statute Law Amendment Act, 1995

Comité permanent de l'administration de la justice

Loi de 1995 modifiant des lois
en ce qui concerne l'intervention,
le consentement et la prise
de décisions au nom d'autrui

Chair: Gerry Martiniuk
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Wednesday 28 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mercredi 28 février 1996

The committee met at 1004 in room 151.

ADVOCACY, CONSENT
AND SUBSTITUTE DECISIONS
STATUTE LAW AMENDMENT ACT, 1995
LOI DE 1995 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'INTERVENTION,
LE CONSENTEMENT ET LA PRISE
DE DÉCISIONS AU NOM D'AUTRUI

Consideration of Bill 19, An Act to repeal the Advocacy Act, 1992, revise the Consent to Treatment Act, 1992, amend the Substitute Decisions Act, 1992 and amend other Acts in respect of related matters / Projet de loi 19, Loi abrogeant la Loi de 1992 sur l'intervention, révisant la Loi de 1992 sur le consentement au traitement, modifiant la Loi de 1992 sur la prise de décisions au nom d'autrui et modifiant d'autres lois en ce qui concerne des questions connexes.

The Chair (Mr Gerry Martiniuk): Good morning, members of the committee. This is a continuation of the hearings of Bill 19 by the standing committee on administration of justice. We concluded yesterday at 5 dealing with the government motion to insert a new section into schedule A, section 15.1. When we left, Mrs Boyd was addressing this motion and will continue this morning.

Mrs Marion Boyd (London Centre): As we were saying yesterday when the committee ended, the motion that the government has put forward essentially puts back into the hands of the health care professionals whether or not, in what manner and to what extent people get information when they are found to be incapable.

We really believe that that indeed contravenes the rights that individuals have, given the seriousness of this finding of incapacity. We believe very strongly that if indeed this is the route that the government is going to take, what it will mean is that individual people in Ontario will find themselves in a situation which is frankly untenable in terms of the seriousness of a finding of incapacity.

The government has politely requested the health care professional colleges to provide—and the wording is quite interesting—“in the circumstances and manner specified in guidelines established by the governing body of the health practitioner's profession, provide to persons found by the health practitioners to be incapable with respect to treatment such information about the consequences of the findings as is specified in the guidelines.”

That can't be anything else but a blank cheque to the health care professionals. The government is saying to them they can do whatever they like about this, and we are abandoning the vulnerable people who depend on

governments to ensure that those who have power over vulnerable people will inform them about the circumstances and the consequences, and indeed their rights to appeal the findings of that health professional.

Quite frankly, as we said yesterday and as Mrs Caplan said on behalf of the Liberals, this was entirely counter to the vast majority of the presentations that came in front of this committee, and I would point out even against the presentations of many of the medical professionals who believe very strongly that this was not the job that they should have, who talked quite persuasively about the need to have independent people.

It was only the powerful controlling bodies of the health care professions that suggested this should be left in the hands of the professions. There's nothing in this motion which indicates a time frame, so presumably this act could be put into place while the colleges are still considering whether or not and in what manner to respond to the government's request.

In the meantime, rights advice information about the right to appeal would not be available to people and, quite frankly, I think if the government is being sensible, they will understand that that will no doubt under those circumstances be challenged and certainly is not an appropriate way to deal with this very sensitive issue.

We believe very strongly that the government listened only to a very small proportion of the people who came in front of this committee. We believe very strongly that they are abdicating their role as the protector of the vulnerable by putting this forward in this manner.

There are no sanctions built into this on any government motion if the health care professionals should not fulfil the request of the government. The parliamentary assistant says, “Under the act the minister could require this,” and we're saying, “Yes, and as we saw with the issue around sexual abuse with physicians, that may well be what you are required to do.” In the meantime, hundreds, thousands of vulnerable people will not have the information they require and their lives will be affected dramatically by the fact that there is nothing in place. We urged the government in a previous motion not to put this act into effect until something was in place, and of course they refused to listen to us.

1010

What we're saying is if you really are serious, and we've heard lots of fine words about how serious you are about advocating on behalf of the vulnerable, then how can you leave this kind of vacuum when people's lives are literally at stake in this situation? Your trust and faith in the medical professions is touching, but we wouldn't even have any of these actions, we wouldn't have had 15 years of discussion in this province around the need to

have laws surrounding consent, if those professions had been eager participants out there in front ensuring that informed consent was really occurring.

The whole reason we are sitting here with these very important bills in front of us and the whole reason that the previous three governments worked on this issue was that that wasn't happening. The horror stories, unfortunately many of them told at inquests, tell us that the need for this kind of information is very strong.

Vulnerable people came in front of us in this committee and said that without some form of rights advice, without some form of advocacy, they feel more vulnerable than ever before as a result of this act, particularly because it literally hands back power over their lives, in many cases to those who have been abusive of them, without knowing that they've been declared incapable. All sorts of treatments can happen to them without their ever knowing why someone is able to do this to them. We have no assurance, in fact I have very little faith, that we will see anything that is going to be adequate for vulnerable people come out of the colleges in a short period of time, in the period of time that we contemplate before you put this act into place.

Mr Rosario Marchese (Fort York): That's a fact.

Mrs Boyd: In the meantime, notices have been given to the rights advisers who were there under the Advocacy Act. They all came in front of you telling you that their jobs were up on March 29. They understood that, and there is this huge vacuum. For a government knowingly, and I would suggest knowingly, to put people at risk in this way is simply unconscionable.

I would urge the government not to go through with this particular motion, to look at ways, at least if you are going to put the responsibility in the hands of health practitioners, to put them on a timetable to require them to do this and to provide for yourselves not what is in the letter that your counsel sent the colleges that they should just submit these guidelines to the ministry, but that the minister himself must be prepared to look at them and make sure they are adequate for the protection of vulnerable people.

Mr Marchese: That's right.

Mrs Boyd: The responsibility is a responsibility of government to protect those who are unable to protect themselves. Quite frankly, by putting this in place in the way that you are, you're simply abdicating that responsibility, and people will know that. That's not going to be a surprise or a secret. People will understand that that is exactly what has happened and that you did not listen to the vast majority of people who came in front of this committee, that you decided to listen only to those who have been the powerful ones within the medical profession and whose attitudes have led us to the point where legislation is required to protect vulnerable people.

It is not clear to me from this motion—it may well be that it is implied—that not following these guidelines would call a person in a health profession before their college on a disciplinary matter. I would like some clarification about the force of guidelines under the Regulated Health Professions Act, whether in fact breaking a guideline formed in this very informal way

would constitute professional misconduct, and I wonder if counsel could give me that information.

The Chair: Would you please identify yourself.

Ms Halyna Perun: Halyna Perun from the legal branch at Health. I'd like to look at the Regulated Health Professions Act before I answer your question, and I undertake to do that in the next little while.

Mrs Boyd: I certainly hope that before we are called upon to vote on this motion, we will know whether or not breaking one of those guidelines or ignoring one of those guidelines would in fact be professional misconduct, because if it would not, I think this is a very serious move that you're making. I think you may be under the illusion that it would necessarily be that way. I think it's very important for you all to recognize that even legal counsel for the ministry is not sure that would be the case. That's a very serious matter, so I hope we have that answer before we vote on this particular motion.

Mr David Tilson (Dufferin-Peel): There's no question, and our government has made it perfectly clear, that we're most reluctant to interfere in the clinical practice of health providers. We're most reluctant to do that. It would appear from what you've been saying, and anticipating your amendments, looking at your draft amendments at least, that obviously you want to go much further than that. You want to—I know you'll say the word "interfere" is an unfair word—become involved in the clinical practice, or at least become quite specific as to what medical practitioners should do.

Mrs Boyd is putting up her hand, and my question is to her as a result of some of her past comments. How far do you think the state should go in interfering or intervening as to the clinical practice of medical practitioners or health providers?

Mrs Boyd: I, first of all, do not in any way think that any of our motions would interfere with the clinical practice of any physician. What our motions suggest is that we have not as a society required health practitioners to be responsible to the consumer in a way that is appropriate. We believe very strongly that this whole action that has happened in the last 15 years—many, many discussions have said very clearly that, yes, in the best of all possible worlds we might like to think that we can trust health professionals to treat people with dignity and respect, to respect their rights, to ensure that they know what their rights are and to ensure they understand that they have a right to consent and that if they're considered incapable then there is a process they can follow if they disagree with that. I do not in any way think that involves clinical practice.

Mr Tilson: The reason I asked that question is—

Mrs Boyd: May I finish, please? I really need to finish because I think it's very important for you to know.

We heard many physicians who came in front of us saying: "Of course I consider that my job. I can't be a healer if I'm not treating my patients that way."

None of these acts would be required if there were not problems. Those problems may be in a minority of cases, but they are problems. We also heard consumers come in front of this committee and say that that is not the practice of health care professionals, that in fact health care professionals are more than willing to say, "We

know best and we will do what we think is best, whatever you think of it."

That's a problem, because we are based in a situation where our health care is a very important thing to us. It's probably more important to vulnerable people who might be considered incapable, because it is literally very much more immediate to a disabled person or a frail elderly person. They're aware of health as an important aspect of their lives in the way that those of us who are healthy and able-bodied are not necessarily aware of in a daily way.

So I would say very clearly, and many physicians said this to us, good medical practice would indicate that this communication with patients would be part of the healing process. What you need a law for is that this has not been the case in many cases, and we heard many instances of that.

1020

Mr Tilson: I know you're going to pull out the summary—Mr Marchese loves to do that—and quote, and that's fair. And Mrs Caplan delights in talking about no consultation or lack of consultation. I guess I'm telling you that in my own personal experience, which certainly hasn't been in the health area, but as a person who's been sitting in this place for as long as you have at least, medical people and health care providers, long-term-care providers and so on have said to us, "You've got to give us some discretion."

Notwithstanding Mr Marchese waving this in front of me, I'm telling you what has been said in my own riding, in sessions that I've had in my own riding, and I dare say which you've had in your own riding. You may contradict as to maybe things go on differently in London than in Dufferin and Caledon, but I'm telling you that in my riding the medical people have felt that the state is starting to interfere too much in their clinical practice, and we need these people. If we want to help the vulnerable people, we need these health care providers. Not only do we need them, we have to trust them. Not only do we have to trust them, we really have to trust them, because if we don't trust them, they're not going to want to do this stuff. We need them, we desperately need them, because if we don't have them, we're in big trouble.

That's why, Mrs Boyd, I guess I'm looking to you to be cautious in your remarks in scaring off health care providers. Why would you want to do this sort of thing—and I say "this sort of thing," the work that they're doing—if the state's going to come along and start telling them how to practise medicine? I think they would find that fairly resentful.

This whole issue with respect to this amendment that's before us now, of course, is the issue of providing information, not advice but providing information, making sure they're aware of things, of their rights.

Mr Marchese: It doesn't say that.

Mrs Boyd: It doesn't say anything about rights.

Mr Tilson: I'm sorry, it does say that.

Mr Marchese: No, it doesn't.

Mrs Boyd: It doesn't say anything about rights. Whatever information they decide.

The Chair: We'll each have our opportunity.

Mr Tilson: Maybe that's fair for a debate as to the interpretation as to what the section says. I suspect that's probably what we're really debating here, that we think it says one thing and you think it says something else, and that's maybe the next issue that we want to get into. But my concern with your remarks and what you're suggesting that the government do is that you're asking us to interfere more than we want to and more than we should in the practice of medicine.

Mrs Elinor Caplan (Oriole): I would like to be very clear on behalf of our party that we do not believe the state should interfere in clinical practice. In fact, one of the concerns that I have is that Bill 26 has done more to frighten and scare and give the government the potential to interfere in clinical practice than anything we see before us in Bill 19.

Mr Tilson: If you want to debate Bill 26, we'll do that, but this isn't the time to debate Bill 26.

The Chair: Mrs Caplan has the floor, ladies and gentlemen, if we could.

Mrs Caplan: I don't want to provoke Mr Tilson but I must say it is unfortunate that he would raise that spectre in the context of the policies of his government. I'm not going to get into that. I just want to put on the record where we stand on this so that we're clear.

We do not believe the state should interfere with clinical practice. We believe that we can respond appropriately to the request of all of those who came before the committee, the 78% who said that it is reasonable to have a statutory obligation. We believe that you should leave it to the colleges to develop those guidelines and we have a later amendment that is actually quite comfortable with the government's and we hope that they'll support it when we get to it. We intend to support the government's amendment because we see it as better than nothing, although we think that it is obfuscation and not helpful to clarity. We believe legislation should be much clearer than this clause is, and we are going to support this clause.

The other thing I want to say is that we are not going to be supporting the NDP amendments that will put it into the statute and not permit the colleges to do the guidelines and the regulations. The reason we're not going to support it is because of what we heard from so many who came before the committee who talked about the poisoned atmosphere that results from having it written in statute.

It's not that it interferes with clinical practice; it's that unfortunately we have an environment out there now where too many backs have gotten up. I was quite impressed and distressed to hear what Peter Singer had to say about this. The reality is, for those who are watching this debate and listening and for the record, that what is being requested as far as an obligation to inform is standard practice in the Mental Health Act and it has been for 20 years. And 80%, by the way, of those who would fall under Bill 19 will fall under the Mental Health Act.

Under the Mental Health Act there is an obligation on the part of the psychiatrist who deems someone incapable to let them know and to let them know that they have the right to appeal that finding to the Consent and Capacity

Board. Before that it was called the psychiatric review board. That is a right and that is a procedure that has been in place in this province for 20 years. It is not new. It doesn't interfere with clinical practice. What it does is foster an important communication.

We heard from psychiatrists—and the only reason I'm repeating this, Mr Tilson, is you didn't hear it personally. I'm not criticizing that, but we heard from the psychiatrists who say it's not a problem. It doesn't interfere. It fosters better practice of medicine and it doesn't interfere with clinical judgements, and it's been the practice in this province for 20 years. We also know that the legislation requires the office of the public guardian and trustee to inform people.

So you have in this legislation and in this province a statutory obligation to inform in the Mental Health Act. You have a statutory obligation to inform if it's the public guardian and trustee. All that is being requested by us is a statement in here that it's a statutory obligation to inform for everybody else, those 20% or 25% who would not be covered by the Mental Health Act and the public guardian and trustee, and it may be as low as 10%.

What we're asking for isn't new and it's not an interference in clinical practice. It's not anything that anyone has objected to under the Mental Health Act once it was in practice. Were there objections when it was brought in 20 years ago? Yes, there were. How has it worked in practice? It's worked very well. We heard that from a doctor from Hamilton, from the Hamilton Psychiatric Hospital. Check the Hansards: not a problem.

The problem is that the previous legislation did create an atmosphere where people misunderstood and got their backs up. So we can correct this in this legislation, and I think we should. That's why we're going to support the government's amendment, and we hope that they will support ours at the appropriate place, because it does empower the colleges, but it also clearly lets everyone know that the same obligation that exists in the Mental Health Act and that exists for the public guardian and trustee should exist for everyone under this legislation. That's the request that we're making.

I want to be on the record that we will not be supporting the approach that puts the whole thing and the guideline process in the statute. We have confidence that the colleges can and will—and in fact I spoke to Michael Dixon of the College of Physicians and Surgeons, and they are prepared to do that. In fact, as he said to me, they've had an advancement in their thinking since they appeared before the committee and were influenced by the representations at the committee by many of their own members and feel that they can do this and do it in a way which will deal with that issue.

But there is one which would not be resolved by the colleges, Mr Tilson, and that is those people whom you will be able to regulate as assessors—as evaluators. The language is important. You can designate social workers, and you intend to do that, but this amendment that you have put forward will not cover them because they are not part of a regulatory college. Our amendment will fix that, which is why we hope you will support that. I'm not going to speak any further on it. I would like to suggest that we just vote.

1030

Mr Tilson: You're saying it would cover all social workers.

Mrs Caplan: No, no. What I'm saying is it would cover all evaluators. Our amendment will cover all evaluators as far as their obligations under the legislation, whether the evaluator is a social worker, as you decide by regulation, or it could be another health care practitioner that you decide by regulation can be an evaluator who is not part of a college and a self-regulating profession. I frankly can think of a few who would qualify.

Mrs Boyd: Mr Tilson said, "Maybe London's different," and certainly the presentations we had from physicians from London were different from what we heard from the college. I'm delighted, if Mrs Caplan is right, that the college has advanced its thinking since it appeared in front of us. That is very good news and we should all be very pleased about that because, quite frankly, I was very discouraged in terms of the presentation that was there.

Certainly, the physicians who appeared before us, the majority of whom, as I recall, were psychiatrists, were absolutely adamant that they believed this was part of good practice, always had been part of good practice and I simply point out to the members the reason we got that message from large numbers of psychiatrists was that they've had 20 years of working under a regime that requires them to give rights and requires them to tell people about the ability to appeal. They have found that this works very well, that in fact it fosters good communication between them and their patients. They were very clear about that; that has become part of practice.

But if you look back at when that became part of the rules, in, I believe, the early 1980s, you will find that in fact there was a lot of resistance from that group of physicians at that time. They also made claims, as I recall, about this interfering with them between their patients and their experience has shown them that was not true, that in fact as they moved forward, as they found themselves able to make this part of their routine, it fostered communication. We heard that from Doctor Harris, we heard it from the group who came forward to us from the Victoria Hospital. So, Mr Tilson, you may be right. Physicians in London may be in a different position than they are some places.

We also heard from people in London, though, of inappropriateness in terms of the information about incapacity. We heard about inappropriateness in terms of the attitude towards those who are frail or disabled when they are incapacitated and suggestions being made about treatment or lack of treatment, withdrawal of treatment, that were quite disturbing. Same city, same profession.

I guess what I would say to you is, if you are going to pass this motion, then I would urge you to also pass the motion which is supplemental to this requiring in law that health professionals who find someone incapacitated in fact must inform them. That way you will have the impetus here to carry on this good intention that's been expressed. I find that very often when we're in this kind of situation with impending legislation, a great many promises come out of the professions that might be affected and then, as time goes on, we don't see that

same level of commitment when they find that they are not required by the legislation to do it. I don't think physicians are any different from other professionals in that, in order to avoid being required to do something by legislation, there is often a willingness to change which is not quite as enthusiastic once they get their own way and are not required by the legislation to do something.

So I would say, in terms of this issue of interference in clinical practice, if we are really to take seriously the comments of physicians who came before us and said, "It interferes with my clinical practice to fully inform my patient of what the circumstances are and what my findings are, it interferes with my clinical practice to provide my patient with the information that they don't have to accept my decision on incapacity," then I think we should all be very apprehensive.

If, clinically, physicians are clear in themselves and have confidence in their own views, why would they object to their patients having that information? Why would they object to having to give full information to their clients? We didn't hear that from all of the health professionals. We heard from the dentists, for example, the dentists very clearly saying that of course information should come forward.

So it's very important, I think, for us to keep in mind that this spectre of the interference with clinical practice is a red herring, it is completely a red herring, and it is not something that we should take seriously at all in our deliberations.

Mrs Helen Johns (Huron): Mr Chair, I believe we have the answer from legal counsel.

Ms Perun: Sorry about that. We still wanted to bring over the Medicine Act and the regulations to actually have before us, but one of the heads of professional misconduct is the basket clause, which is conduct unbecoming a physician or other health practitioner. Each health professions act has that kind of provision in the regulations, and a breach of a guideline would be a conduct unbecoming a practitioner and that issue would be subject to disciplinary matters as well.

Mrs Boyd: May we ask what kind of sanction applies in that kind of disciplinary matter?

Ms Perun: It's a matter before the disciplinary college, so the sanctions that the college has vis-à-vis any other breaches would apply.

The Chair: Does that answer satisfy your inquiry, Mrs Boyd?

Mrs Boyd: Well, it sounds like there's the ability of the college, if a vulnerable person, first of all, knows anything about a process of making a complaint and makes that complaint and then is able to withstand the long waits that happen in terms of disciplinary matters of the college, that eventually this matter might be considered by the disciplinary committee, and I would say, if we're just talking about conduct unbecoming to a health care professional, the disciplinary action would be similar to being slapped on the wrist with a wet noodle.

Mr Marchese: I guess the reason why we're taking a bit of time to discuss the government's motion is because we have a good sense that they will defeat ours, so we're trying to reform theirs as best we can. Our says:

"If a health practitioner finds that a person is incapable with respect to a treatment of a mental disorder in any psychiatric facility, a person designated by said psychiatric patient advocate office shall,

"(a) explain to the person the significance of the finding of incapacity and the right to apply to the board for a review of the finding, unless the health practitioner certifies in writing that,

"(i) the explanation would be harmful to the person, or

"(ii) the person's condition is such that the explanation would be of no value; and

"(b) if requested, assist the person in obtaining representation for the purpose of an application to the board."

Now, we support our motion, this one and others in different places—there are several motions that we have—but this is one of them.

In another section:

"If a health practitioner finds that a person is incapable with respect to a treatment, a person designated by a non-profit corporation established for the purpose of providing rights advice under this act shall,

"(a) explain to the person the significance of the finding of incapacity and the right to apply to the board for a review of the finding, unless the health practitioner certifies in writing that,

"(i) the explanation would be harmful to the person, or

"(ii) the person's condition is such that the explanation would be of no value; and

"(b) if requested, assist the person in obtaining representation for the purpose of an application to the board."

We believe our motions addressed some of the concerns that doctors stated, and that is, in some cases they felt it could be harmful. Well, if that's the case, then our condition says that you can proceed but certify in writing with an explanation that doing so, giving that kind of advice, would be harmful to the patient. That takes care of the concerns the medical profession had with respect to it.

These are our motions. I know that they will be defeated; we have a good sense of that. So we're trying to come to terms with your motion to see if we can get as much as we possibly can to be able to address the concerns that I wave around, Mr Tilson—because you say I wave around this document.

1040

Mr Tilson: No, you do a great job, Mr Marchese.

Mr Marchese: Thank you, Mr Tilson. This is the final summary done by our research. It's not something I wave around because it's mine. And I don't wave it around, I just show it to you for clarity purposes. I read yesterday a whole list of comments that organizations have made with respect to this. They're not my comments; they're comments of organizations that have spoken to this matter. It's important for you to hear it again in the event that some of you missed it during the deputations, and it's useful for the public watching to know that we are not saying these things in a vacuum. We're saying it because many have said it, and if it concerns them, it concerns us.

There are several things that I want to add because I think that what we're trying to do is to balance rights, and the right to consent and a process for disagreement,

an obligation to inform is a critical part of what we're trying to do.

You say that you have an interpretation of your motion and that we have another. I understand that, but this is where our disagreement is. Our interpretation of your interpretation is based on the comments that you make with respect to it. You say: "We are reluctant to interfere in clinical practice. We need doctors"—we agree with that—"and we have to trust doctors"—we agree with that too. But in saying that you're reluctant to interfere in clinical practice, what that means to me is that the language that you have built in there is the least intrusive, is a minimalist kind of approach to the profession saying, "Please provide something"—

Mr Tilson: It doesn't go as far as yours.

Mr Marchese: It doesn't go as far as ours, absolutely, but what yours does is not quite clear. Now, you're saying it gives rights advice; we're saying it doesn't. It doesn't say that in the motion. You want it to say that.

Mr Tilson: That's the crux of the thing.

Mr Marchese: I think that's what you want to say to us here, but the motion doesn't say that. So what we're saying to you is, if that's really what you want to say, build it into the motion. Stand it down, work the language so that it says what you said. But it doesn't say anywhere in the language that we read that there is a duty to inform or an obligation to inform. It just says "provide...with respect to treatment such information about the consequences of the findings"—

Mrs Johns: As is specified.

Mr Marchese: —"as is specified in the guidelines," whatever those guidelines say. If you wanted to say what we're arguing on this side of the room, then say it differently. And if you also say it says rights advice, well, say that, because there are no clear directions in there as to what those guidelines should be. That's our objection to your motion. You do not instruct the professions, the colleges, what they should do. So if you want it to say that, instruct them properly and clearly. Then we have no problems objecting to the motion, but as it is, it doesn't do the job. It pretends to do it, but it doesn't do it.

So in good faith, if they mean what they say, then they should write it out in such a manner; otherwise, they're not saying it and they're not doing it.

Interjection.

The Chair: I was going to call the question, Mr Tilson. We are dealing with the government motion to add section 15.1, which is contained on page 101. Shall the amendment pass?

Mrs Boyd: Recorded vote, please.

Ayes

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

Nays

Boyd, Marchese.

The Chair: The amendment is carried.

We will now proceed to page 102 of the proposed motions, and this is a Liberal proposed amendment. I

have been advised by the legislative counsel that this could be construed as complementary and therefore is a proper motion for debate.

Mrs Caplan: We're hoping that the government will support this. There were two things that we heard; one was that because the legislation allows an administrator to call in someone to advise the patient of their rights, we believe it's important that the legislation be very clear that this person not be involved in the treatment of the clinical care of the person. So I'm going to move the following motion.

I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"15.1(1) If a person is found to be incapable with respect to treatment in a hospital or other health facility and that hospital or health facility decides to advise the person with respect to that finding, the hospital or facility shall ensure that the person giving the advice,

"(a) is not involved in the treatment or clinical care of the person; and

"(b) has received training to give such advice given or approved by the Psychiatric Patient Advocate Office."

One of the concerns that we have as well as making sure that there is no conflict when someone is selected by the hospital administrator to come in to give advice to a patient, is that this person has received training. We've heard a number of presenters come forward to express the need for training to make sure that people who are doing this work know what they're doing. We have also heard the concerns of others as to the impact that this can have and we want to make sure that it's done properly.

There is one body we hope the government will give the mandate to, in fact, for not only all the schedule 1 agencies but I would hope for any and all of the community mental health programs where rights advice might be appropriate, and that would be the Psychiatric Patient Advocate Office.

The Psychiatric Patient Advocate Office at the present time has a mandate to do rights advice and advocacy in the 10 provincial psychiatric hospitals. This is the group that I referred to earlier on when I said there are things that are existing and in place in the province and have been for some 20 years that are quite accepted practice. Now, at the time the Psychiatric Patient Advocate Office was developed by a former Conservative government, it was very controversial and it was brought into place because at that time there was a demonstrated need in the psychiatric hospitals. There were many abuses of the people who were committed there. We all know of those horror stories; I'm not going to get into it. But when the PPAO, as it is known, was established, it was very controversial. It has proven itself. It is respected and supported by most of the staff in those hospitals. It's respected and supported by the clients they serve. It's respected and supported by community organizations. I think that's the most appropriate organization to do two things: (1) I think its mandate should be expanded to all psychiatric programs, and the reason I use the word "programs" is there are some programs that are not provided in schedule 1 hospitals, so I would use the word "program" rather than "facility," but you could call it

"facility" as long as you made sure that every facility that had a psych program in it would ensure that they use the services of the PPAO. The ministry can do that; it doesn't have to be in legislation, and I hope they will choose to do that because I think that's the right decision, because you've got something that is proven and that works, that doesn't interfere with clinical judgements, that knows how rights advice should be given.

1050

But the second thing that I think could be mandated and should be mandated in the legislation is that anybody who is selected by an administrator should have received training from the PPAO. They train their own staff now. They can hold training courses, conferences, bring people in. It's the lowest-cost way of doing it. In fact, I think that everyone would feel very comfortable knowing that people had been identified in their communities who had been properly trained by the PPAO so that this would run smoothly.

So this is a complementary amendment. It is designed to assist in the implementation of the government's intention to allow hospital administrators to identify someone to give this advice and I think that it would be a good statutory move to identify the place where that training should take place.

The last point I want to make is that there is no requirement for any training at all, and if you don't support this motion, there's no assurance that there will be any training of people who are called upon to give rights advice out in the community, because we haven't had any signal from the government that they intend to expand the mandate of the PPAO. Since that is their discretion to decide whether or not they want to do that—if they were to say to us, "We intend to give the PPAO the mandate to provide their services in all of the settings where it would be appropriate under the Mental Health Act," I would have some confidence that that was going to happen. But we're not certain that that's going to happen. As a bare minimum, I think that we've got to ensure that anyone who is out there receives training.

As you know, the one thing that everyone has said to us is you do need coordination of these kinds of things, you need training, you need education, and hopefully, this amendment is just one small step towards ensuring that at least you have a standard set for training, you do have some coordination and a little bit of accountability built in. It's also very important that the individual giving the advice is not someone who is in direct clinical care. We heard that from presenters when they came forward and said, "We think that we may have the patient's best interests at heart." There is frequently a conflict, and so it is very important that the person coming in to communicate and talk to the patient, when that's been deemed advisable, should not be in a position of direct clinical care. Again, that should satisfy Mr Tilson's concerns, because this is not interfering in any way with clinical practice, it does not interfere in any way with clinical judgements and it brings in someone who is freed from those conflicts to advise the patient when the decision is made by the hospital administrator to bring someone in. I think that's a full explanation. I hope there won't be a

need for a lot of debate and I hope the government will support this very reasonable amendment.

Mr Michael A. Brown (Algoma-Manitoulin): Agreed.

Mrs Boyd: I will just say that I could echo, on clauses 15.1(1)(a) and (b), all the comments that Mrs Caplan has made. We too believe that there needs to be some protection on conflict of interest for both the health professional and for the individual who has been deemed to be incapable and that having someone who is not directly involved is a way to resolve that.

What Mrs Caplan said about the Psychiatric Patient Advocate Office is certainly something that we would echo. We think it has been a very important institution and has functioned very well in spite of the hostility that greeted its inception. In fact, we think it has given us the example of why rights advice in fact is important and how that works for people. Part of what we're doing in this whole process is to try and make sure that that is balanced out, and when we come to a discussion of section 50, we know that that really is one of the efforts that we're making here, that people have rights but those rights mustn't interfere with treatment if they have made a decision that that should be the case. The Psychiatric Patient Advocate Office has been very effective in that.

We cannot, however, vote for this motion and the reason we cannot, to our vast surprise, is that if you read this motion, "If a person is found to be incapable with respect to treatment in a hospital or other health facility," and it really should read "and 'if' that hospital or health facility decides to advise the person with respect to that finding, the hospital or facility shall ensure that the person giving the advice," and then the two clauses.

We don't think there should be any "if." We don't think it should be up to the hospital or health facility to make a decision as to whether or not a person is informed that they have been found incapable. We believe very strongly that that is a basic right for someone to know that in fact they have been found incapable and that there are dire consequences for their ability to make their own decisions under those circumstances. If people don't know that, then in fact it is not appropriate. If, as I hope, Mrs Caplan is telling me that I'm reading it wrongly—I think grammatically I'm reading it wrongly because that's all in a conditional clause which ends with a comma after "finding," and if that is not what was intended by this motion, then we ought to know that.

The Chair: Could you clarify that, Mrs Caplan?

Mrs Caplan: Yes, I'd be happy to clarify that. As you know, Mrs Boyd, this legislation removes the obligation for rights advice for everyone. There is a clause, and I'm looking for it, if you can help me out, Halyna, to reference it, the one that says a hospital administrator may call in or appoint someone to give rights advice.

Ms Perun: It's under the Mental Health Act.

Mrs Caplan: It's the amendment under the Mental Health Act.

Ms Perun: There are obligations to call rights advisers under the Mental Health Act only.

Mrs Caplan: Right, and so it's under the Mental Health Act and the hospital administrator, under this legislation, because rights advice has been removed from the

schedule 1 community hospitals—as I understand, it was the commission that was providing that in those facilities. The PPAO has only provided that in the psychiatric hospitals, and at the present time, under the schedule 1 hospitals, there's no one there providing that when the patient is brought into a hospital. The reality is that not everyone is committed in a psych general hospital schedule 1, and so the wording of "when" is to relate to the fact that it would be a committal under the Mental Health Act and that it would not apply universally to everyone because the hospital administrator would not be obligated, except under the Mental Health Act, to do that. That's why we chose those words, because that was the intent of this motion.

We recognize that this legislation removes rights advice for everyone, but we don't want two classes of mental health patients, as has existed in the province. We don't think that should continue any longer and we think that those who have rights, if they're in a provincial psych hospital, particularly given the rumours of divestment and particularly given the concerns about the shift of service to community hospitals and ultimately into the community—we think that it's important that all of those who are receiving treatment under the Mental Health Act have the same rights. So that's the intent of this motion.

If the government would like to suggest some wording changes, we would certainly be happy to have that so that it is clear, because that is the intent of the motion, just to make sure that all mental health patients, those under the Mental Health Act, are treated the same.

Mrs Johns: I'd just like to draw your attention—we have done something very similar under the Mental Health Act because we believe that it should be amending the Mental Health Act that you're talking about. We have done numbers 65 and 68. If you have any questions about those, I'll let Halyna speak to that.

We find that this being in section 15 with respect to treatment is a problem place, where it's situated, because you really are talking about the psych facility as opposed to in the normal course of treatment, I believe.

Mrs Caplan: I have a problem with your term "psych facility." That's why we put it here and we used the word "when," so that it is not obligatory for everyone. The problem that we have is that there are psych programs that are not in designated psych facilities. We want to cover those programs, which was why we put it here. We didn't just put it under the Mental Health Act, because under the Mental Health Act you're then restricted to a psych facility. There are some community hospitals delivering psych programs that are not under schedule 1 and we wanted to cover those as well, and we think this would do that, because it is permissive. Mrs Boyd is quite right and I understand her concern and I know that you do have amendments later that cover just the Mental Health Act, but we think this would cover all psych patients in programs that were outside of that which is designated a psych facility. That was the intent, for clarification.

1100

Ms Perun: The way the Mental Health Act works, first of all, it provides requirements right in the statute for notification of rights adviser for certain things such as

certificates of involuntary commission and the like. What the government motion on page 65 does is redefine what a rights adviser is and set out that it would not include a person involved in the direct clinical care of the patient to whom the rights advice is to be given, but the Mental Health Act applies. At the back, there are four schedules to which the Mental Health Act applies, so the psychiatric facilities are those listed in schedules 1, 2, 3 and 4. So they do cover community hospitals where psychiatric services are provided.

Mrs Caplan: No, Halyna, check. There are some community hospitals that provide psych services that are not schedule 1 and listed and therefore covered. That's the problem.

Ms Perun: The consequential amendments that were done to the Mental Health Act give the government the ability to make a regulation-making power to address the provision of rights advice for treatment of those who have been found incapable of psychiatric treatment, to which the Mental Health Act applies. That is what the government amendments to the Mental Health Act do.

Mrs Caplan: We believe that a companion amendment in the Health Care Consent Act is important because it would allow for discretion where a hospital administrator feels that it is appropriate to call in someone, and by designating someone from the PPAO—there may be a situation where someone in a general hospital not covered directly under the Mental Health Act would need that—we want the discretion to be there to allow that to happen. It's protection for patients. It doesn't hurt anything, it doesn't cost you anything. We think it's an important amendment. I take the point and I would point out to you that, as Mrs Boyd said, this is discretionary and it is permissive. It's not mandatory.

Mrs Johns: The way that we read this before we came to the meeting today was, "If a person is found to be incapable with respect to treatment in a hospital or other health facility and that hospital or health facility decides to advise the person"—so we know it can't be under the Mental Health Act because of the "decides to advise a person"; we know that's not the Mental Health Act; we're dealing with other places—"with respect to that finding, the hospital or facility shall ensure that the person giving the advice is not involved in the treatment or the clinical care of the person." So from our standpoint, the person who is giving the rights advice under 15.1 will be the health practitioner, under the motion that just passed, under 15.1, because of the guidelines that will be prepared by the college. We have asked them to consider information including the right of review.

Mrs Caplan: This is something different. This says that if you have a situation arise where a hospital administrator decides that rights advice is appropriate, over and above whatever the colleges come up with in the way of obligation, this wouldn't hamper that. You would still have your doctor or your nurse or whoever is doing that; they would do whatever their college advises them by guideline to do. But this says that where the hospital administrator says that there is a need for rights advice separate from that, then they would bring in someone who's been trained by the PPAO. It's a protection of some rights advice in those cases where clearly there's

been an appeal to the hospital administrator and the hospital administrator wants to do something. It allows them the discretion to act.

Mrs Johns: Are you suggesting that the doctor, under his guidelines, will give information and rights review and then the person can appeal to the hospital administrator?

Mrs Caplan: That happens frequently and it could happen in a hospital where someone is dissatisfied with what's happening. Most hospitals now have patient complaint offices and that sort of thing. That is what's contemplated, so that there is an opportunity for someone to do something rather than saying, "I'm sorry, there's nothing I can do." You have situations now where, if someone is dissatisfied with what's happening in the hospital, they end up going to the hospital administrator.

Mrs Johns: They have the option to review the decision, if they're unhappy with it, in different ways under the act. I don't understand why the administrator is the person that we're talking about here. I mean, this brings a new person into this rights advising that we have never contemplated or heard of in any of the deputant statements.

Mrs Caplan: Maybe I can explain it a little bit better; maybe I haven't done a very good job. This legislation, Bill 19, wipes out all mandatory rights advice by independent rights advisers. That's gone. Truthfully, in its place there's not much.

Mrs Johns: But the health practitioner—

Mrs Caplan: There's nothing. There's no obligation, Helen. There's nothing here that obliges. You've left it to a guideline to be developed by the colleges. I supported that. What I have said is that it is reasonable because you have other circumstances taking place under the Mental Health Act. You may have a situation where someone in a hospital, a patient, a friend on their behalf, says, "Look, we really think this person is in a situation where they need some help." They go to the hospital administrator. This permits him, rather than throwing his hands up and saying, "I'm sorry, there's nothing I can do"—it's permissive; it doesn't require, it doesn't say you have to, it doesn't cost anything—to say, "I can call somebody and ask them to come in and help you out." That's all it does. It does not reinstate third-party mandatory rights advice in any way. It does not do that. It just gives an opportunity for the hospital administrator to say, "Let me call the PPAO and see if they can send someone to give you some advice." That's the intent of the motion.

The Chair: Mrs Boyd was speaking to the Liberal motion to amend.

Mrs Boyd: I've listened to the discussion very carefully and we will still have to vote against this because we are not defeatist in the sense that the Liberals are. We, as you know, have several motions still to come. We consider very seriously those motions and would urge the government to require that people be informed. We're going to vote against this, not because we disagree with any of the concerns raised by Mrs Caplan, but that we would feel unable to vote for a motion that concedes that professionals ought not to be responsible for informing someone that they found them incapable.

The Chair: I'll put the question. Shall the amendment proposed by Mrs Caplan pass? All those in favour? All those against? The motion is defeated.

We now proceed. There are three motions by the NDP: 103, 104 and 105. Mrs Boyd is it your intention to proceed with all three or only the latter two?

Mrs Boyd: No, I intend to proceed with the next one because it in no way conflicts with the motion that—

The Chair: Fine. I didn't know. We are now proceeding with the proposed motion on page 103.

1110

Mrs Boyd: I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill be amended by adding the following section:

"Notice of finding

"15.1 If a health practitioner finds that a person is incapable with respect to a treatment, the health practitioner shall ensure that the person is advised of the finding of incapacity."

This would be complementary to the motion that the government has passed putting the responsibility in the hands of the colleges to determine the way in which this is done, the finding. It should be very clear that "The health practitioner shall ensure that the person is advised" in no way determines ahead of time whether or not that will be third-party advice or whether the health practitioners themselves will be required to do it. What it says is that assurance is there to vulnerable people, that if they are found incapable, they will be informed that they have been found incapable.

That is extremely important and I sincerely hope that the government will accept this motion because I think they believe that having passed section 15.1, the amendment that they put in themselves, that's what that means. If that's what you think it means, then hammer it down and make sure that the health care practitioner is responsible to ensure that information is given.

Mrs Caplan: My concern with this is that it would lead to the same kind of Mirandizing statement that has been so objectionable and really hasn't fostered the kind of communication that I think we need to have. While I think that this motion is well intended, I hope that instead the government will support ours, which is numbered 189, which will leave it to the colleges to determine how the form would be for each one.

My worry is that if this were to pass, you would get the unfortunate situation of someone saying, "I have the obligation under the legislation to inform you," and that would not be helpful to anyone. It's with regret that we're at this situation, that this would be the result. I think it's unfortunate, because that is the climate that we're in because of the previous legislation and the fact that people were not properly informed and educated and brought along to the point where I listened to Dr Singer and I just don't think this will achieve the purpose that it is intended to do. We will not support it.

Mrs Johns: The government will be opposing this motion also, for much the same reasons as Mrs Caplan suggested. We believe that the current notice requirements we have in the CTA are excessive. We believe this would cause this to happen again. We also believed that when we listened to people who were talking about how

there needed to be some professional judgement about how you told some people about their incapacity, whether you just said, "Aunt Sally is going to be helping you make this decision," how you did that without coming out and saying, "You're incapable." So the government will be opposing this motion.

Mrs Boyd: It will not be lost on the vulnerable people of the province that both the Liberals and the Conservatives are again saying that they don't need to be informed if they're found incapable. This in no way tells how that will be done. It is complementary to the motion already passed by the government which has put in the hands of the various colleges how they will do that under their circumstances. It is up to them to build the flexibility into that, according to the motion that you yourselves have brought forward.

All this does is give assurance to those who may be found incapable that if they are found incapable, someone will let them know that, in whatever form that takes. Under your motion, it would enable the colleges, if they were worried that someone, first of all, was comatose and couldn't understand—they could exempt that. If they thought it really might harm their patients, they could exempt that. It gives all of that flexibility into the hands of the professions, under your own motion. All this does is say: "You've got all that flexibility in how you do it. You've got all that flexibility in the methodology that you employ, the words that you employ, but you must let people know that they're incapable." I think it is very, very serious that I hear both the Liberals and the Conservatives saying to people, "We don't believe you must be informed and we are not going to ensure that, by legislation, you are informed."

The Chair: I'll put the question. We're dealing with the motion of Mrs Boyd to amend the motion contained on page 103. Shall the amendment carry?

Mrs Boyd: Recorded vote, please.

Ayes

Boyd.

Nays

Michael Brown, Doyle, Grandmaître, Guzzo, Johns, Ron Johnson, Klees, Parker, Tilson.

The Chair: The motion is defeated.

We will now proceed to a new section on schedule A and contained on page 104 of your proposed amendments. This is an amendment by Mrs Boyd.

Mrs Boyd: Under the circumstances, I wonder if we could consider 104 and 105 together. I have no hope that the government is going to pass these, but I do want to make the motions because I think it is important that we indicate the way in which we thought this rights advice ought to have been done. So if I could read them both into the record at the same time and argue on behalf of both of them?

The Chair: I certainly accept that.

Mrs Boyd: I move that the Health Care Consent Act, 1995, as set out in the schedule A to the bill, be amended by adding the following section:

"Rights advice

"15.2 If a health practitioner finds that a person is incapable with respect to a treatment, a person designated by a non-profit corporation established for the purpose of providing rights advice under this act shall,

"(a) explain to the person the significance of the finding of incapacity and the right to apply to the board for a review of the finding, unless the health practitioner certifies in writing that,

"(i) the explanation would be harmful to the person, or

"(ii) the person's condition is such that the explanation would be of no value; and

"(b) if requested, assist the person in obtaining representation for the purpose of an application to the board."

I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"Rights advice

"15.3(1) If a health practitioner finds that a person is incapable with respect to a treatment of a mental disorder in any psychiatric facility, a person designated by the Psychiatric Patient Advocate Office shall,

"(a) explain to the person the significance of the finding of incapacity and the right to apply to the board for a review of the finding, unless the health practitioner certifies in writing that,

"(i) the explanation would be harmful to the person, or

"(ii) the person's condition is such that the explanation would be of no value; and

"(b) if requested, assist the person in obtaining representation for the purpose of an application to the board.

"Section 15.2 does not apply

"(2) Section 15.2 does not apply in the circumstances in which this section applies."

The thrust of these two motions would require that the health practitioner provide rights advice, in the first section 15.2, in all facilities that are not designated in the Mental Health Act as a psychiatric facility. In the second motion, if anyone is in a situation where they come under the Mental Health Act, then the Psychiatric Patient Advocate Office would be responsible for providing that advice.

I agree entirely with the arguments that Mrs Caplan put forward in terms of the Psychiatric Patient Advocate Office and in her previous act. We believe that wherever someone is under the Mental Health Act, in fact this kind of rights advice, particularly independent rights advice, is very important.

I would remind the committee of the submission that was made to us by the Consent and Capacity Review Board. They talked about the breakdown of applications in front of that board by type and they made it very clear that in terms of the Mental Health Act 80% of all applications which came to the board were applications under the psychiatric designation. So it is extremely important that we recognize that the rights of psychiatric patients be honoured, whether or not they are in one of the Ontario psychiatric hospitals.

I again would urge the government to seriously consider passing these amendments to ensure that rights advice is available to people, whether they are under the Health Care Consent Act or under the Mental Health Act.

1120

Mrs Johns: The government will be opposing this motion, as Mrs Boyd has already said. One of these two motions would move us further into the rights advice category than we have been in the past. What we're suggesting under these amendments is that rights advice is given to any person who has a finding of incapacity. What has happened in the past is truly that if a person has requested rights advice, they've been able to have a rights adviser and so we find this will lead us right back to where we were with the consent to treatment: long delays, access to timely health care will become something that does not exist, and it will in effect limit the quality of health care in the province of Ontario.

The Vice-Chair (Mr Ron Johnson): Do you want to speak, Mr Marchese?

Mr Marchese: Just very briefly.

Our motions would not limit the quality of health care at all. It's wrong to say that.

Mrs Boyd: Nor would it cause delays.

Mrs Johns: It would cause delays.

Mr Marchese: It wouldn't limit the quality. It would cause a delay perhaps, but it wouldn't limit the quality.

People, individuals, need the right to be notified. Our motions are quite clear with respect to giving individual people who may find themselves in these vulnerable positions the right to know. That's what it does. You're taking those rights away. You can say what you like; it doesn't go farther than before. It does not. It doesn't limit the quality of health care. It protects and gives people rights they should have in order to protect those individuals who find themselves in very difficult mental situations. What you're doing is, you're taking that right away.

Our motions are quite clear. Your motion with respect to the guidelines as you spoke earlier are not. They're not clear with respect to this. There's no clarity. We told you that. You want to believe that, but that's not true. Our motions are much clearer than your motion with respect to rights notification. But it's quite clear that we haven't been able to convince you, and so other than making these arguments, there's nothing more we can do.

The Vice-Chair: All those in favour of the motion?

Mrs Boyd: Recorded vote, please.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Guzzo, Klees, Johns, Leadston, Parker, Tilson.

The Vice-Chair: The amendment is defeated.

The same vote for the second motion? Same vote.

Moving on to section 16, schedule A, a government amendment.

Mrs Johns: I'm on page 106 of the binder and on page 70 of Bill 19.

I move that clause 16(1)(b) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"(b) before the treatment is begun, the health practitioner is informed that the person intends to apply, or has applied, to the board for a review of the finding; and"

Our rationale for this was that we wanted to ensure that people who had applied would have that same time or that would give the same intent as people who were intending to apply and would stop the treatment until either they had applied, the 48 hours kick in or a number of the issues that were outlined in the act.

The Vice-Chair: Seeing no speakers to this, all in favour? Opposed? Carried.

Mrs Johns, second amendment.

Mrs Johns: Page 107. I move that clause 16(2)(b) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"(b) before the treatment is begun, the health practitioner is informed that,

"(i) the incapable person intends to apply, or has applied, to the board for appointment of a representative to give or refuse consent to the treatment on his or her behalf, or

"(ii) another person intends to apply, or has applied, to the board to be appointed as the representative of the incapable person to give or refuse consent to the treatment on his or her behalf; and"

It's the same reasoning from the last one.

The Vice-Chair: All those in favour?

Mrs Caplan: Same vote.

The Vice-Chair: Same vote.

The third amendment with this section is an NDP amendment.

Mrs Boyd: I move that clauses 16(3)(c) and (d) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"(c) until the board gives a decision in the matter and,

"(i) the appeal period elapses without an appeal being commenced or all the other parties have informed the health practitioner that they do not intend to appeal, or

"(ii) an appeal of the board's decision is finally disposed of."

What this does is, if there is not going to be an appeal then it allows the treatment to go forward. If there is an appeal, it prevents the treatment from going forward until the board's decision is finally disposed of and, therefore, really reflects an honouring of the wishes of the individual or the substitute decision-maker.

Mrs Johns: We're opposed to this motion. I think the real discussion comes down to the onus is on who is to commence the process in clause (c)(i). In our act, the onus is on the party to come to the health practitioner. In Mrs Boyd's case, the onus is on the practitioner to—just a minute. All of the other parties have informed the health practitioner so—I'm sorry. So the difference is the parties have, or all of the parties have, informed.

Mrs Caplan: Could I ask you to start again so maybe somebody could understand what you're saying?

Mrs Johns: Yes. I just have to find it in here.

Mrs Caplan: You gave her the wrong briefing note.

Mrs Johns: No, it's what I thought was changed in the section. In the bill, if a party to the application before the board has informed the health practitioner that he or she intends to appeal the board's decision and ours is—until

the period for commencing the appeal has elapsed without appeal being commenced, and if the appeal period lapses without an appeal being commenced or all of the other parties have informed the health practitioner that they do not intend to appeal. So we have to wait for all of the parties to say that they aren't going to appeal the process. We find this onerous. We feel that it could cause delays and we believe that treatment should commence as quickly as possible. In the past, they've had to wait seven days, I think, and we want this process to commence as quickly as possible after the appeal process so people will not be caught with undue delays.

Mrs Caplan: I have a question.

The Vice-Chair: Actually, we'll start with Mrs Boyd; she's first on the speakers' list.

Mrs Boyd: I think it may be the same question, Mr Chair. In fact, the force of this is quite the opposite to what Mrs Johns says. It is required that you wait until the appeal period elapses. What we're saying is that it may be that no one who's already a party to this action—and everybody knows who the parties are because they've already appeared in front of the board—if they all say, "None of us is appealing," it allows the commencement of treatment much earlier. And that's the whole purpose of this.

Mrs Caplan: So in fact, it speeds it up.

Mrs Boyd: So either you let it elapse, which is what you've done—and we're saying, but if nobody's going to appeal, why let it elapse? That's all we're saying.

Mrs Caplan: So if you're—

The Vice-Chair: Mrs Caplan.

Mrs Caplan: —and that was my question.

The Vice-Chair: Fine, but you go through the Chair to do that, okay?

Mrs Caplan: Can I ask a question?

The Vice-Chair: Go ahead.

Mrs Caplan: My question is: Since this is going to speed things up as opposed to delay, why are you opposed?

Mrs Johns: Because my advisers here are telling me that it's going to slow the process down and I think that we should hear why they believe it's going to slow the process down. I think that would be—

Mrs Caplan: Because in fact—

Mrs Johns: —because that's obviously not what we're all intending, so if it is going to—

Mrs Caplan: As I read this, in fact, it speeds things up because you don't have to wait until the end of the appeal period; you can commence before, if nobody objects. I thought it was a good idea.

Mrs Johns: Can I have an opinion from leg counsel on this, please?

Ms Joanne Gottheil: Clause (c) in the existing bill says that when the board renders a decision in the matter, the treatment may be begun if none of the parties to the application has informed the health practitioner of an intention to appeal. So if no one has said anything, the treatment may be begun. And the motion says that all of the parties have to say that they have not given an intention to appeal. So the motion requires all parties to say something, and the bill says that as long as no one has said anything, treatment may begin. That's the difference.

1130

Mrs Caplan: The concern that I had when I read the legislation and I saw the amendment was that a prudent practitioner would wait to protect himself.

Mrs Johns: You can see that my stand is correct, though. This amendment would take longer because they'd have to wait for every—

Mrs Caplan: No. In fact, I think this amendment would foster communication, so that you could get everybody and say, "Do you intend to appeal?" "No." "Okay, let's proceed." If they don't say anything and you're at all concerned, you just wait until the appeal period lapses because you haven't fostered that communication. I think this fosters the communication and you would get more rapid treatment, because the legislation would say, "If you check it out and nobody says they're going to appeal, go ahead." You don't have to wait. An assumption of silence, I think, would create a chill for the practitioner, who, if he wasn't given a direction, would wait. So in fact while your intention may be not to delay, I think the government's motion in the bill actually causes greater delay. This would speed things up if you could get an assertive, "We're not appealing; go ahead."

Mrs Johns: Can I have legislative counsel's opinion of what Mrs Caplan just said?

Ms Gottheil: I think it's for the ministry lawyer to answer which would be more of a delay. I can just tell you what the words say.

Ms Perun: In our view, again, the way the current clause (d) reads, "if a party to the application before the board has informed the health practitioner that he or she intends to appeal," would facilitate the treatment at an earlier stage. That's our view of clause (d).

Mrs Boyd: I think Mrs Caplan is quite right. A prudent physician, knowing that there is an appeal period during which an appeal can be launched, I think would be unwilling to start treatment. What could be more destructive of the relationship of a physician with the patient than starting treatment when that patient still has a period of time in which to decide, or the substitute decision-maker? If we want something that's destructive of communication between physicians and their patients, doing that sort of thing is likely to cause a problem.

What we're saying here is, the prudent physician will probably wait until the end of the appeal period anyway. I know the government is going to say they've saved them from liability, so if doctors only don't do things because of the threat of liability, they may be right that it would be faster. I don't believe that's the case. I think that in fact the doctors will wait, because it would be destructive of their relationship. In fact, this would encourage the practitioner—they're all together when the board gives the decision in any case—to say to anyone who might be a party to the thing: "Look, is anybody going to appeal? If nobody's going to appeal, I'd like to start the treatment"—

Mrs Caplan: Exactly.

Mrs Boyd: —and get that decision to come forward a little bit more quickly.

Mrs Caplan: What sometimes happens at these hearings where there's been a concern about the treatment going forward—you may not be clear about your inten-

tion not to appeal at that time. I believe this would speed things up.

Mr Frank Klees (York-Mackenzie): I'd like to just ask a question of counsel. If in fact all of the other parties did come forward and say they do not intend to appeal, is there anything in the existing legislation that precludes the health practitioner from proceeding with the treatment?

Ms Perun: No.

Mr Klees: So if there isn't anything in the existing legislation that precludes the treatment from taking place, don't we have the same effect here?

Mrs Caplan: If I can, Mr Chair, I would argue in favour of the amendment—I think Mrs Boyd might make the same argument—that no, you don't have the same effect, because the way these hearings sometimes work is, if you lost at the hearing board, you might be a little disappointed and you might just be silent or sullen and not say anything. Then the physician, who wouldn't want to hurt your feelings, wouldn't ask you anything either, but they wouldn't commence with the treatment because there is an appeal period during which you can appeal. If they were prudent, they would just wait it out.

This would allow them at the hearing time to say, "Look, are you going to appeal this?" And if people say, "No, we're not," then they proceed with the treatment.

So in fact it's a question of whether you think that silence—especially since what I've heard from Mrs Johns is that your intention is to see treatment proceed expeditiously. I believe that's the intent of this motion, but look, we'll see what you do.

Mrs Johns: I want to ask you a question that they're putting to me to ask. You went through a scenario there where the health practitioner went to all these people and said, "Are you going to appeal this?" and they said, "No," and so he could proceed forward. What if one of the persons said, "I don't know"?

Mrs Caplan: He couldn't proceed. He'd have to wait, just as he does now.

Mrs Johns: He'd have to wait the seven days?

Mrs Caplan: Under your legislation, he'd have to wait because he's now had an utterance.

Mrs Johns: Under our legislation, they could proceed forward unless they came to us—

Mrs Caplan: No, no, no.

The Vice-Chair: Ms Caplan, sorry. Mr Tilson has addressed the Chair. Go ahead, sir.

Mr Tilson: My question is, if everyone agrees, then you're saying, "Let's get on with it," as opposed to, if there's silence, Mrs Caplan's saying someone, to be cautious—because everybody's afraid of being sued nowadays—would wait. That's the purpose of your amendment.

Mrs Boyd: They're not worried about being sued. We've precluded these people from liability. They're not worried about being sued.

Mr Tilson: All right. You're right, they're precluded.

Mrs Boyd: What they would be worried about is, if they go ahead with a treatment and then there's an appeal and they lose the appeal and they've already given the treatment, what is that going to do to their relationship with their patient? That's my issue.

Mr Tilson: Okay. So that's the intent.

Mrs Boyd: Yes.

Mrs Johns: Thank you very much for that debate. I think we understand it better. I'm going to have to stand it down because they're going to have to look at the legal implications of this, but I appreciate your helping me, because the discussion we've had has been very different about this amendment. So as much as you may think I hadn't thought it through, we've seen it in a very different light.

Mrs Caplan: Good. By the way, just to help you in your deliberations—

Mrs Johns: We'll talk about it after lunch.

Mrs Caplan: —the scenario that you suggested where a practitioner does ask the question and someone says, "Well, I'm not sure," they'd be very foolish to proceed. I don't think they would. I think they'd wait to see what the person intended to do. So in that context, I don't think that your legislation would give them any comfort.

Mrs Johns: What we didn't want to have is just seven days of waiting if we didn't have to.

Mr Tilson: Getting to your scenario, the practitioner is waiting to hear from somebody. If they proceed, aren't they breaking the law?

Mrs Caplan: No, not under yours.

Mr Tilson: Not under ours.

The Vice-Chair: Mr Tilson, if we're going to stand it down, we're going to come back to it anyway.

Mr Tilson: To be fair, I want to understand what the intent is.

Mrs Caplan: Your law today says, if there's silence, they can proceed. The point is, if there's silence, they may be concerned about proceeding.

Mr Tilson: Okay. Thank you.

The Vice-Chair: Can I get unanimous consent to stand it down? Okay. Moving on to the next amendment, the government amendment.

Mrs Johns: It's on page 109. That is page 72 of the bill.

I move that subsection 16(4) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "section 23" in the last line and substituting "subsection 23(1)."

The definition of "emergency" is contained in subsection 23(1) and we wanted to tie this in to this section. It's a cross-referencing difference.

The Vice-Chair: Seeing no speakers, all those in favour? Carried.

On to section 17, shall section 17 carry? Carried.

Section 18, schedule A, a Liberal amendment.

Mrs Caplan: I move that subsection 18(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "child or" in the first line of paragraph 5 and by adding the following paragraph:

"4.1 A child of the incapable person."

1140

Mr Tilson: Mr Chair, on a point of order: We carried section 17. Did we carry section 16, as amended?

The Vice-Chair: No, because one of the amendments was postponed. We stood down that one.

Mrs Caplan: In speaking to this one, 18(1), what we're adding under 4.1—it says, “the incapable person's spouse or partner,” and the next one is “a child or parent of an incapable person.” This is the hierarchy, and we believe that it would be better if you separated out parents and children in the hierarchy.

This is the reason: Government has stated its intention to have the public guardian and trustee come in as a last resort. It's been suggested that when you have people in the hierarchy—let's say you have four children, as I do, and they don't agree. If it splits two-two, the public guardian and trustee comes in, so there would be an encouragement on the children to come to terms and agree. But at least they're all children; they're at the same point in the hierarchy. But if my mother and my children disagree, they have different interests.

So we believe that parents and children should be separated in the hierarchy to keep the public guardian and trustee out. If it is your intention that the public guardian and trustee be the last resort, I don't think you want to create in your hierarchy a situation where different interests in the hierarchy could lead to the public guardian and trustee coming in.

I think I've explained it clearly. I'm not going to go on at any length. I hope you will support this. In fact, in the previous legislation, children and parents were in separate categories. I think that is appropriate, because they do have different interests.

Mrs Johns: We took this to a number of our meetings in the mornings before the deputants, because we had some discussion about this very issue. We had one deputant very early on suggest that we should move these off, and then no one else commented on it after that. When that deputant came forward, they suggested that a person in their 40s and 50s could well have a parent and adult children, and who were we as government to decide which one of those people had priority over the other one? Obviously, if they were fighting about it, they both cared about the individual.

We heard from the public guardian and trustee in one of our meetings that as two opposing groups come together and they find out that if they don't agree, or one of them doesn't choose, the public guardian will take over, it's a very strong incentive for those people to decide on one or the other in the hierarchy or to decide on the decision together, unanimously, as opposed to someone who doesn't know the people.

I understand why you're saying it, as a result of us having the same discussion, but we believe as government that we're not the people who should be telling people that a child is more important to a person than a parent, that an adult child is more important in the decision-making process than a parent. So we have decided to oppose your motion, although I know it's something that we've spent a lot of time thinking about.

Mrs Boyd: I want to support this motion. In the circumstances that Mrs Johns says, people can name whoever they like in a power of attorney, and if people know that the hierarchy is such that someone would come ahead of the person they want in the hierarchy, then they should be naming somebody anyway. There's a fail-safe there. There is not a fail-safe in terms of having them in

the same category. In fact, you all have done all sorts of motherhood statements about how one of the things you want to accomplish with this bill is supporting families, and in fact what you're doing by not having those two groups separated clearly in the hierarchy, so that people can make decisions themselves if they don't like the hierarchy, is to sow the seeds of dissent within families.

I believe, Mrs Johns, that you're incorrect. I believe more than one person—I believe several of the lawyers who came before this committee suggested that the hierarchy should separate those two things out. I do not think it was just one deputant. I think there were a number of people who said they didn't understand why that had been changed, that if people want to change the hierarchy, they have the option of naming a person. With them lumped into one category, I think that's much more confusing for people in terms of making their own choices. We will be voting for this amendment.

Mrs Caplan: I just want to let you know what your opposition could result in, and that is having the public guardian and trustee coming in more times than are required. I agree that everybody should name a substitute and a power of attorney, but lots of people are not going to do that. The one thing you want to do is stop conflict within the family. When you lump everybody in the family together, you're going to have the public guardian and trustee come in more times than if you separate them. It's not a question of who's more important. If people want to decide for themselves who's more important, that's fine. It's not a question of, are parents or children more important? The issue here is, do you want those family members all lumped into one category, which will foster dissent because they do have different interests, which will bring the public guardian and trustee in more times?

I believe that you who have been saying, “We want the public guardian and trustee to come in as a last resort. We don't want them to come in too often. We want to leave this to families to sort out,” are going to have the exact opposite result by lumping all family into one.

Your example, which says the threat of the public guardian and trustee coming in will resolve the issue, let me tell you, if you think that resolves issues in families, it doesn't. It makes it worse. So think about it, because you've been telling people: “The public guardian and trustee is going to get out of your face. This legislation is going to leave it to families.” I think if you do not support this amendment, you're going to have the opposite effect of that which you desire. It's a political decision. It's not something that anybody else is going to do. This is a decision of your government and I think it flies in the face of your commitment to leave it to families.

We have no problem in putting adult children ahead in the hierarchy. If you want to reverse it and put parents ahead in the hierarchy, I'll live with that. I'm just saying separate them.

Mrs Johns: I just wanted to comment that we considered the conflict aspect when we talked about this before. As you quite rightly pointed out very much earlier, with children or brothers and sisters on the same line, you will have conflict in different lines at any time. We know that there will be conflict if families choose not to work together for the best result for the person who's

incapable, so we understand that issue and we have thought about it.

Mrs Caplan: I just think this minimizes it and I'm sorry that you are not supporting it. At this point I just want to go on the record as saying that if you don't support something like this, I'm trying to think of what it is you're likely going to support in the amendments that are coming forward.

Mr Tilson: Oh, come on.

Mrs Caplan: I'm getting very frustrated. We've worked very hard to improve your bill.

Mr Tilson: We just stood one down to consider one of your proposals.

The Vice-Chair: Mr Tilson, please.

Mr Tilson: Give me a break.

Mrs Caplan: We're working very hard to try and bring forward things that are going to be helpful and improve that are not in any way—

Mr Tilson: To say we're not listening to you is insulting.

Mrs Caplan: —contrary to the things that you have stated as goals of the legislation, and on something like this one, frankly, I'm surprised that you wouldn't support this, because it fits with everything that you have said you believe in.

Mrs Johns: It also fits with the fact that I said we talked about this a lot, and so we obviously, all three sides, were considering this issue. It's a very important issue and we wanted to make sure we got it right, and we believe we're getting it right by leaving it this way. I'm sorry that you don't believe we're getting it right.

The Vice-Chair: All those in favour of the motion?

Mrs Boyd: Recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Leadston, Martiniuk, Parker, Tilson.

The Vice-Chair: The amendment is defeated. Moving on to the second amendment in this section, the NDP.

Mrs Boyd: I move that section 18 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsections:

“Statement by family member

“(6.1) A person described in paragraph 4, 5, 6, 7 or 8 of subsection (1) shall not give or refuse consent on the incapable person's behalf without first making a statement that,

“(a) identifies his or her relationship to the incapable person;

“(b) indicates that he or she has no reason to believe that the incapable person, before becoming incapable, would have objected to him or her making the decision to give or refuse consent;

“(c) indicates that he or she has no reason to believe that another person referred to in the same paragraph or an earlier paragraph of subsection (1) claims authority to give or refuse consent; and

“(d) if the person claims authority to give or refuse consent under subsection (4), indicates that he or she

believes that no other person described in an earlier paragraph or the same paragraph of subsection (1) exists, or that although such a person exists, the person is not a person described in paragraph 1, 2 or 3 and would not object to him or her making the decision.

“Form of statement

“(6.2) A statement under subsection (6.1) may be made in the prescribed form.”

1150

The argument for this is that a number of people coming forward to the committee expressed concern that the statement of relationship would not be there. It is very important for us to ensure that when we are giving vulnerable people over into the hands of substitute decision-makers for their health care, the appropriate efforts have been made to ensure that the person meets all the requirements we've set out.

I'd read to you and remind you of what Judith Wahl of the Advocacy Centre for the Elderly had to say on this matter: The HCCA has no requirement of a written or verbal statement whenever a substitute decision-maker is stepping in to make treatment, admission or service decisions. This allows the possibility that where a health practitioner decides that Mrs Smith is not capable of making a decision without Mrs Smith knowing, then a decision may be made and acted upon before Mrs Smith learns anything of what is going on. This surely undermines autonomy. Something more is needed to drive home the seriousness of the situation to potential substitute decision-makers and ensure that only someone with proper authority assumes the decision-making role.

The form of our statement under subsection (6.2) can be in a prescribed form; it would allow a checkoff form if that were decided by the government in terms of making regulation. It could identify all of these things. The person could simply check it off and sign it and that would be a very appropriate kind of assurance to vulnerable people. But only someone who has the appropriate authority would be acting as a substitute decision-maker. Particularly because this government has decided that those who are determined to be incapable don't need necessarily to be informed of that, this is a safeguard for vulnerable persons.

Mrs Johns: The government opposes written family statements, and I'd like to talk about the reasons why we do. We believe that they're overly bureaucratic and they're introducing a lot of red tape to the system. We heard a number of different organizations come forward and talk about the formal statements, and in fact I have a quote from the Hospital for Sick Children, which said: “We also strongly support the elimination of the requirement for a formal family member statement, as has been required in the Consent to Treatment Act.... It was confusing for parents and it required an unreasonable use of our staff's time.”

We believe that by not putting into effect written statements, what we're doing is restoring the faith in the family that they will act appropriately and the proper person will come forward to make the decisions for the person who is incapable.

Mrs Caplan: We have some amendments further on that deal with the need to have a relationship with the person within a period of time. The concern that I have

with this is the written statement. Actually, I'd like something that would foster the communication and the discussion, but I think the same argument that I made about the Mirandizing of the practitioners is the same problem I have. While there are some parts of this that I would like to support if it didn't require it in written form, I do think the obligation to have a checkoff or something written would lead to an unnecessarily bureaucratic approach. So if Mrs Boyd would consider something that just required a verbal acknowledgement, I would be supportive of that, but I'm not happy with (6.2) prescribing it in written form.

Mr Marchese: I just want to read from the final summary again, page 49, to show that other groups, other than people like hospitals—and you mentioned the Hospital for Sick Children—are very concerned about this. So it's my usual question about, who are we informed by? They're usually informed by the medical association or by doctors or a hospital, and we're informed by a lot of other people who are directly involved in the field dealing with vulnerable people. That's why I do this from time to time.

Two organizations say the following: "Restore the requirement of a formal statement by family members who propose to give or refuse consent on the incapable person's behalf to ensure their accountability." That is CMHA and OMOD.

"The substitute decision-maker should still be required to make a 'statement of relationship' to the incapable person before being able to give or refuse consent." That's PACE.

"Before a relative makes a decision on behalf of an incapable person, the relative should be required to state the following:

"—the nature of his or her relationship to the incapable person;

"—the relative has no reason to believe that the incapable person, prior to the incapacity, would have objected to the relative acting as a substitute decision-maker; and

"—the relative understands his or responsibilities to make a decision according to the principles set out in s. 19."

That was PPAO.

"Reinstate the requirement that the substitute decision-maker must make a statement of personal contact with the incapable person over the last 12 months." That was OMOD.

"Stipulate that the person listed in s. 18 who proposes to make a decision on behalf of an incapable person must provide a written statement that the person with higher ranking would not object to the person making the decision." That was Mr Winner.

The point of these statements is to say that there are enough people who are concerned about possible abuses or possible ways that the autonomy of individuals could be undermined and the respect for those individuals could be undermined. That's what we're getting at with the statement. I understand that you're saying it's overly bureaucratic. We don't agree. We understand it imposes some duty to have to go through it and review and so on. You call that overly bureaucratic; we call that protection. Because people are concerned.

When it comes to how we respect those individuals who are in a very vulnerable situation, do we call that overly bureaucratic because we require a statement of them, or do we say, "How do we find ways to protect them?" That's why we read out these statements, to show you that people in the field are very concerned about this. I say you should be too, as opposed to saying, "Well, let's read into the record what the Hospital for Sick Children said, and they say, 'It takes an unreasonable time from us.'" I understand it takes time, but if you're protecting people—

Mrs Johns: They said it was confusing also.

Interjection: Well, then, prescribe a different form.

Mr Marchese: They say it was confusing. If they say that it's confusing, let's do it in a clear way. Let's make it more clear, whatever you think is required to make it clear, but don't just dismiss it because you say it takes too long or it's bureaucratic, and now we say it's confusing. We don't think it's confusing. If you believe this is important, then let's make it clear. Obviously, that's not the issue. You just don't want to do it.

Mr Tilson: We've got a philosophical difference. How's that?

Mr Marchese: All right. So you're saying as well, in terms of an argument, "We're restoring the faith in family." We're having the same old argument here. We think that most families are good. We've always said that. That's not the issue. The issue is where there is the potential for abuse in some cases, we're saying impose an obligation through a written statement so that people who do this understand the seriousness of what they're doing, as opposed to simply saying: "Well, we just trust them. It's okay. Everything is all right." We think that's a wrong approach to be taking.

In terms of Mrs Caplan's approach, written versus another verbal acknowledgement, we believe that a written statement is clearer, but if the government were to accept some other form of acknowledgement, we would be willing to accept something like that as well, if that's what it takes. What we want is something that reminds people of their obligations and the seriousness of what they're doing. What you have doesn't do that. What we have does it, but if you think there's something else that moves in the direction of what Mrs Caplan is saying, we'd be willing to look at that as well. But please listen to the people who have come in front of this committee who say: "We want this statement and you're not listening. You're listening to the hospital, but you're not listening to the other groups that are rooted in the communities dealing with vulnerable people." Thank you.

The Vice-Chair: Seeing no other speakers, I'll call the vote.

Mrs Boyd: Recorded vote.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Grandmaitre, Guzzo, Johns, Klees, Leadston, Martiniuk, Parker, Tilson.

The Vice-Chair: The amendment is defeated. It is now 12. This committee will recess until 1 pm.

The committee recessed from 1201 to 1300.

The Vice-Chair: We are on section 18, schedule A. Subsection 18(10), page 112, is the next amendment.

Mrs Boyd: I move that subsection 18(10) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "blood, marriage or adoption" in the last line and substituting "blood or adoption."

The purposes of this are to respond to the number of people who came forward during our consultations who were concerned that people who are only tangentially related to someone through marriage might become under the system of hierarchy a person who could make substitute decisions for them. There were those who talked about the issue of fathers-in-law, for example, making decisions on people's part.

Judith Wahl of the Advocacy Centre for the Elderly said: "The HCCA now defines 'relative' as a person who is related by blood, marriage or adoption. This definition greatly extends the number of potential SDMs to a large number of relatives by marriage, so that Mrs Smith's husband's second cousin may become a candidate for a SDM to make an admission decision on behalf of Mrs Smith. Mrs Smith may never have heard of this person before."

I have three siblings, all of whom are married. All of their partners have brothers and sisters and many relatives. If I just look at my own situation in terms of who would be a relative by marriage to me, I am very concerned about this sort of situation. If I wanted my husband's father's second cousin to be my substitute decision-maker, I would name that in my power of attorney. I don't find it very acceptable that we are allowing that kind of distance as an automatic capability for someone, and I sincerely hope the government will change its mind on this one.

Mrs Johns: We oppose this motion. What we heard during the course of the events was people asking for the definition of "relative" to be provided and we believe we have done that. I believe, as the daughter-in-law in a family, that at some time it may be appropriate for me to make decisions, as a result of my marriage, for my mother-in-law. I believe that people believe that through marriage it should give them some right or some ability to help in the decision-making process if there is not someone who is closer in line to be making that decision. I believe that the PGT should be the last person on the list and that truly people who come together through marriage should have some ability to assist in some choices as a substitute decision-maker.

Mr Michael Brown: I just have a question. I think it's a legal question. I just want to know how legal counsel defines "marriage" in terms of what the relationships are. Not being a lawyer, somebody could maybe help me at how far this might extend.

The Chair: Could the legislative counsel help us in that regard?

Mr Michael Brown: Just a straight legality.

Ms Gottheil: I think it would just have its ordinary dictionary meaning, marriage.

Mr Michael Brown: So that would include the second cousin of my wife's sister.

Ms Gottheil: Yes.

Mr Michael Brown: Of my wife too.

Mrs Boyd: In answer to Mrs Johns's comment, if she were acceptable to her mother-in-law as a substitute decision-maker over anyone else or if she were the only person available, her mother-in-law could name her in a power of attorney. That's an odd case. That's an unusual case. I can assure you that my mother-in-law, for example, has made a power of attorney precisely for that reason, and there's no preclusion from people naming who they want. It's this automatic issue.

Quite frankly, we had many people come in front of us who said they had no family they knew of, but the ramifications of this are that someone very distant could hear that someone was in a vulnerable position, needed a decision-maker and come forward and be accepted without any kind of statement of relationship because you've already deleted that, could come forward without any kind of knowledge of what the wishes of the person were and take over as both guardian of personal care and guardian of property under this. I just believe that's very inappropriate.

Mrs Caplan: Given the explanation of just how broad this would be, that it's not restricted to the close family at all and could be so far distant that there is nothing that requires contact or relationship prior to this, I have concerns about just how broad you've left it open. Following the explanation, we're going to support this amendment.

Mrs Johns: I have to reinforce that anyone else could apply to become the substitute decision-maker if they believed they would be better capable of doing it, so if it then becomes a friend or something, they could apply to be a substitute decision-maker. That's important for us to remember. But if we don't take marriage in it allows that very important link which is the daughter-in-law, the son-in-law, who I think is a very important person to be involved in the care of an incapable person.

Mr Tilson: There is a protection with the issue of, specifically, a statutory guardian. The public guardian has to approve, whoever it is. Just to take the example, some 19th cousin by marriage just can't come out of the blue, and they're living over in China or some place and the incapable person is here. It doesn't happen just like that.

Mrs Boyd: This government has removed any requirement that people have some relationship to the individual. I wonder if Mr Tilson can tell us on what grounds the public guardian and trustee would turn someone down, given that there is absolutely no requirement for any form of relationship in this situation.

Mr Tilson: No, that's not quite true. There are going to be guidelines put forward to assist the public guardian to make decisions. They're not going to do it just on the snap of a finger. There will be a process, just like everything else we're doing. There is going to be a process. We've undertaken to do that.

Mrs Boyd: So from having a protection within legislation that was required, again you're telling vulnerable people they have to trust that once this law is in place, guidelines will be available that may or may not—because there's no consultation on regulations—meet their concerns around this issue.

1310

Mr Tilson: I guess we could go on and on; we could go to a philosophical difference, so I will stop.

The Chair: Yes, we do indeed sometimes. I'll put the question since there's no further comment.

Mrs Boyd: Recorded vote, please.

Ayes

Boyd, Michael Brown, Caplan, Marchese.

Nays

Doyle, Johns, Ron Johnson, Klees, Leadston, Parker, Tilson.

The Chair: The amendment is defeated.

I'll now put to you section 18, as not amended. All those in favour? All those against? Carried.

Going on to section 19 and, in particular, subsection 19(1), which I believe is contained on page 113, being a motion of Mrs Boyd.

Mrs Boyd: I move that paragraphs 1 and 2 of subsection 19(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable, the person shall give or refuse consent in accordance with the wish.

"2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable, the person shall act in the incapable person's best interests."

This is simply an amendment which ensures that the person who is deciding the best interests of a person is obliged to disclose whether he or she knows of any oral or written wishes expressed. It is an added protection for people, that in fact there is a disclosure requirement, and that the individual substitute decisions notion of best interests would always be mitigated by that expressed wish.

Mrs Johns: First of all, this section takes out the portions that talk about 16 years old. As we have talked about that before, we believe the 16 should remain in there. So we will be opposed to this motion.

The Chair: If there's no further comment, I'll put the amendment contained on 113.

Mrs Boyd: Recorded vote, please.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Johns, Ron Johnson, Klees, Leadston, Parker, Tilson.

The Chair: I declare the amendment defeated.

Going on to 19(3) which is contained on, I believe, 114 of your proposed amendments.

Mrs Boyd: I move that section 19 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsection:

"Disclosure of wishes re withholding or withdrawing treatment

"(3) A person who gives or refuses consent on an incapable person's behalf to a plan of treatment that provides for the withholding or withdrawal of treatment shall disclose to the health practitioner any wishes expressed by the incapable person with respect to the treatment."

This amendment ensures that the person who's deciding the best interests should be obliged to disclose if the person had expressed a wish about withholding or withdrawing treatment, especially with regard to the termination of treatment where a person cannot recover from physical or mental incapacity. We have many situations. Treatment in many cases is palliative, and people may well have expressed wishes about when and how they would like withdrawal of treatment at that stage in their life.

I quote the presentation that was made to the committee by David Winniger. He notes:

"Paragraph 19(2)(c)1 permits the substitute decision-maker, when considering the best interests of an incapable person, to consider not only whether the treatment will improve the incapable person's condition, but also whether it will prevent further deterioration or reduce the rate of deterioration. This may in fact conflict with what are called living will provisions expressed by the incapable person while previously capable. The person deciding the best interests of an incapable person should be obliged to disclose whether he or she knows of any oral or written wishes expressed with regard to the termination of treatment where a person cannot recover from physical or mental incapacity."

We certainly heard some people coming before the committee who indicated their belief that it should never be possible to withdraw or withhold treatment, and others who came forward saying this is very important if people have expressed wishes around this kind of situation. Many people are aware for a considerable time while they are capable that their condition is terminal and may have very strong ideas about what kind of treatment they are prepared to withstand and when they believe the ending of that treatment is appropriate in their case. It should be a requirement that anyone who is going to make decisions on their behalf when they're incapable first of all disclose that those wishes have been expressed and, one would always hope, would then consider honouring those wishes as being in the best interests of the individual.

Mrs Johns: We believe this already happens in some ways in the act, and I want to talk about that for a minute. With a substitute decision-maker who knows the wishes of an incapable person, he has to rely on those to make decisions. We agree that the substitute decision-maker has to listen to the wishes of the person and has to make decisions for that person in accordance with the information. What we object to in this amendment is that all this information then has to be disclosed to the health practitioner. If the substitute decision-maker is making the decisions for the person, is the person selected, we believe that as a result he will have to make decisions based on the best interests of the person. If he doesn't do that, he is subject to the offences as outlined in I think

section 80, 81 or 82. We believe the substitute decision-maker is bound by the wishes he knows the incapable person has suggested, and then is further covered because it's an offence not to listen to those wishes.

Mrs Boyd: In this bill, a health care practitioner who believes that a substitute decision-maker is not acting according to the wishes of the incapable person has the ability, the obligation, to appeal to the Consent and Capacity Board. How is the health care practitioner supposed to know that there were wishes expressed if the person is not required to disclose those to the health care practitioner? How is the health care practitioner going to be in a position to know that the substitute decision-maker is not acting according to the wishes of the individual?

Mrs Caplan: I have no problem with this. It doesn't require paperwork and it would foster a conversation that I think would be an appropriate conversation. These things don't happen in vacuums and in isolation. Certainly at the end stages of someone's life there are all kinds of conflicting emotions occurring, and it's important to have conversations about this and to encourage those conversations about, "What did your mother say?"

It would be nice if everyone had a power of attorney where they'd written it down. For example, in my power of attorney, I have very clearly expressed it as a value that says that if I am terminally ill, I want pain management to the point that it might hasten my death and that's okay with me. It's my right to write that down, to express that wish.

When you're talking to your parents—and I've been encouraging everyone I know to make powers of attorney; not everyone is comfortable making it—if you have a conversation with them, they will say, "Oh, if it's a choice of lingering in pain, give me the painkillers." When the time comes and they haven't written down a power of attorney, I think it's appropriate to have an environment where the question might get asked: "Have you thought about it? What did your mom," or dad or brother or sister or whoever it happens to be you're acting in behalf of, "say about this?" If there's a requirement to disclose, the practitioner has an obligation—or not even an obligation, but it would foster the conversation to ask the question.

I think that would be positive, because for the person making the decision, it would remove any of those conflicts within them about what they're deciding, even though they may know in their heart that the person's wish was to do something or withdraw treatment that might hasten their death. It's very hard in those situations to let go, so you might be tempted to do something or to permit something that would be contrary to an expressed wish in a conversation at another point in time. So anything that will foster communication is positive.

We're going to support this. It doesn't require paperwork. All it does is foster a communication that I think is important at a difficult time in everyone's lives.

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Mrs Johns: With the health practitioner, what we believed was happening was that in some cases they may have external knowledge about the situation. For example, they may have always been this person's doctor, so

they would know the wishes. That's what we thought. If the substitute decision-maker was bringing forward other desires and wishes they had heard, you both are making a very good comment about something we didn't think about, that maybe there should be an exchange between those two people.

Legal counsel would like to have a look at the wording. I apologize for standing this down. I don't really want to stand things down today, but on the other side, I want to make sure we get it right. If I could just have them look at the wording and bring it back in a little while, I would appreciate that. I think you make a very good point. Thank you.

The Chair: Is there unanimous consent to stand down the amendment? Agreed. So the whole section 19 will be stood down also.

We're dealing with the new section 19.1 proposed by the NDP. I believe that's 115.

Mrs Boyd: I'd like to read this into the record, although we had a lengthy discussion yesterday and I have very little hope that the government has changed its mind overnight, although I would wish they would.

I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"Electric shock as aversive conditioning

"19.1(1) A person shall not consent on another person's behalf to any treatment that involves the use of electric shock as aversive conditioning unless,

"(a) on application, the Ontario Court (General Division) authorizes the person to consent;

"(b) the treatment will be administered in a facility approved by the court;

"(c) the facility where the treatment is to be administered has an ethics committee that conforms to standards established by the College of Psychologists of Ontario; and

"(d) the treatment is not being administered for the purpose of research.

"Application of clause (1)(d)

"(2) Clause (1)(d) applies despite paragraph 1 of section 5."

The Chair: We have aired this particular topic re the capacity board rather than the court. Have the positions of the parties changed in regard to this amendment?

Mrs Caplan: In fact the position hasn't changed. We've said we are not comfortable with the way the government has dealt with the matter. We believe Comsoc facilities should be able to provide this treatment but that individual practitioners should not be able to provide the treatment outside a Comsoc facility unless there has been approval by the Consent and Capacity Board. The concern we have with this amendment is that it presents a potentially costly and legalistic approach to something that we think should be dealt with by the Consent and Capacity Board.

The conundrum I have is that because the government has already dealt with this matter, it is not going to accept this if it wouldn't accept our reasonable amendment for the Consent and Capacity Board. While I don't like this, my sense is that it's kind of better than nothing, but they're not going to accept it anyway, so is it just

going through the motions to say something is better than nothing?

But we don't want to send out the message that we think a court process is appropriate, so after some consultation with my colleagues, we're not going to be supporting this amendment. But we hope that the government will reconsider and reinstate or consider at some point even through regulation—and they can do that—requiring by regulation that the Consent and Capacity Board must approve the use of this therapy for incapable people outside of Comsoc facilities. They have the power to do that. I hope they do it. It is our wish that they do it.

We don't think people should have to go to court, but we do think there has to be some kind of accountability for practitioners beyond the guidelines which their colleges may put in place because of the potential abuse—to be really clear—and, second, because there will be no accountability except through an after-the-fact complaint to the college, and that procedure does not work well for controversial procedures such as this. I wanted to get that explanation on the record at this time.

The Chair: I assume, Mrs Johns, the government is opposed to this motion?

Mrs Johns: Yes.

The Chair: We can proceed with the vote.

Mr Marchese: Recorded vote, Mr Chair.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: The motion is defeated.

We are proceeding to section 20. There are no suggested amendments. Are there any comments? If not, shall section 20 of schedule A pass? Carried.

Moving on to section 21, we have an amendment to section 21 proposed by the third party, on page 116.

Mrs Boyd: This is a consequent amendment. Had the previous amendment passed it would have had some meaning, but it has no meaning and therefore we withdraw it.

The Chair: Thank you. Shall section 21 carry? Carried.

Moving to section 22, shall section 22 carry? Carried.

Section 23. We have a third-party suggested amendment, set out on page 117.

Mrs Boyd: I move that clause 23(3)(c) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "steps that are reasonable in the circumstances have been taken" in the first and second lines and substituting "every effort has been made."

The impact of this would be to ensure that in those cases where emergency treatment is going to be provided and the issue is around whether people have been able to communicate with the person in those circumstances, every effort is made rather than just reasonable steps taken. We had a number of different people come in front of the committee who felt there should be an obligation

on the part of the health care professional to be much more proactive than is suggested in the wording now in the bill. Again I would quote David Winninger, who said:

"Section 23 of the new legislation permits emergency treatment to be given without consent of an apparently capable person due to failure to communicate because of language barrier or disability, provided reasonable steps are taken to find a practical means of communication and there is no reason to believe the person did not want treatment. I can understand why we wouldn't want patients dying simply because English may not be their first language, and we don't want to put their lives in peril. On the other hand, it would be more reassuring if the section provided a mandatory responsibility for health practitioners to try to obtain an interpreter in these kinds of cases, both for the disabled and people who have language barriers."

1330

Mrs Johns: The government is opposed to this motion. I understand why Mrs Boyd is putting it forward. We believe "steps that are reasonable in the circumstances"—that the health practitioner will try as much as he possibly can to be able to get someone there to assist in the communication. By saying "every effort has been made," we think it virtually ties the hands of the health practitioner because there will always be that second-guessing in his mind, "Have I done absolutely everything I can?" We believe it will be difficult, slow the process down—it's an emergency situation we're talking about, remember—and we believe practitioners will take "steps that are reasonable in the circumstances."

Mrs Caplan: I guess my question really is for Halyna. While people have expressed concerns about the phrase "steps that are reasonable in the circumstances," I would hope that means every effort. But more than that, my question really has to do with the common law. I think the common law has a fairly onerous test for the term "reasonable," the case law.

Ms Perun: I think the words "steps that are reasonable in the circumstances" are in fact more flexible than "every effort has been made."

Mr Marchese: That's just the point. They are very different, and "every effort has been made" imposes a greater responsibility on the practitioner to find out what it is one needs to do, in the event that someone is disabled, to attempt to find an interpreter for a person, whatever language that might be; or if it's a language with respect to an individual, that one makes every effort to interpret what that might mean. Our language imposes a greater responsibility on the practitioner, which we think is important as a way of protecting those individuals in those kinds of circumstances.

I understand that you want to make it less restrictive to the practitioner, and that's what your language does: "steps that are reasonable." Any steps one takes can be presumed to be reasonable, and thereby the physician or the practitioner has done one or two things and, "We've done it, it's justifiable, and we move on." We think our language puts greater responsibility to think about what one needs to do under the circumstances. That gives greater protection to individuals, and we think that's what is needed.

Mrs Boyd: I don't know what happens in most cities, but I've spent lots of time in hospitals in London, and when someone comes into emergency and is unable to speak English, the practice traditionally has been for someone to get on the PA system and say, "Is there anyone in the hospital who speaks Portuguese?" and ask them to attend at the emergency department. If they don't appear, that's the reasonable effort, that's all that happens, even though in London for the last eight years we have had a cultural interpreter program that has trained people to interpret in 15 different languages and to be available to health care professionals.

It's a very specific thing I'm concerned about. I do not think putting out on a PA system, "Is there anybody in the hospital who speaks" a particular language is the kind of effort we want to see health care professionals doing, yet that is the practice in many places even though other services are available, and that really worries me.

It becomes even worse if we think of the communication difficulties, for example, of the young man who came to talk to us through an interpreter with his Bliss board. In many, many cities there are people who are able to interpret Bliss symbols. What is a reasonable effort in those cases? I think we want a higher onus on these professionals. I'm quite discouraged that at every single step, what this government is trying to do is lessen the ethical commitment and the mandatory necessity of health professionals to act in the best interests of their patients. I don't understand it.

I think you need to make this fairly strong, because communication difficulties can really affect the future of patients if they are not able to make their wishes known. And let's face it, this is in this whole section around consent. For someone to have to endure a treatment because a physician has not made a strong effort to get someone who can tell that physician what the wishes of that individual might be is unconscionable. Here we are again, saying: "That might be a little tough for the physicians. We're putting too many duties on physicians." Sorry, I don't think the vulnerable people of this province would agree with you.

Mrs Johns: I just want to draw the attention of everyone to the fact that we're talking about an emergency situation. Also, if we look at subsection 23(7), page 78, "Treatment under subsection (3)"—the section we're talking about right now—"may be continued only for as long as is reasonably necessary to find a practical means of enabling the communication to take place so that the person can give or refuse consent to the continuation of the treatment." We really truly believe we have asked them to be as expedient as possible to get this communication problem under control.

Mrs Caplan: Actually, that last comment helped. The concern I had here was because of the way it was listed in the legislation, where (a) is "there is an emergency," the suggestion is that by the time you get down to (c) it's not such an emergency. I can understand this amendment in the context of there not being an emergency. If you're assuring us that where there is not an emergency situation, and if that's what you're saying section 23 does, I'm prepared to not support this amendment, because we

wouldn't want to do anything that would deter or in any way stop treatment in an emergency situation.

So my question is, why do you say, "there is an emergency" in (a) and then go on to further define (c)—it seems to be in a separate context. That's a little confusing, although this is under the heading of "Emergency Treatment." Is that because some emergencies are more of an emergency than others? Well, it's true. You can come into the emergency room with a broken leg and that's considered an emergency, but it wouldn't hurt to call the translation folks to come in, because if you sit for another 10 minutes you're not going to end up with gangrene, whereas if you sit three days you've got a serious problem. Or if you're in a lot of pain, the apparent suffering thing should allow for treatment immediately.

I would like that clarified for the record. Everyone wants to see someone who is in distress be communicated with to determine that they have given consent for a treatment, and I think it's reasonable that every best effort be used to do that. I've been quite comfortable with the notion of reasonable steps in an emergency situation, but if this is less of an emergency situation than 23(3)(a) would imply, I'd like some clarification.

Mrs Johns: I'm going to give you my interpretation, and then you can get legal interpretation. I want to draw your attention to subsection 23(1), where it says, "For the purpose of this section and section 25, there is an emergency if the person...." It talks about that. Also in subsection 23(3), where you were talking about (a) being less than (c), as you notice, after clause 23(3)(d) there is an "and," so it means (a) and (b) and (c) and (d) and (e).

Mrs Caplan: You see, the difficulty here is where you have the "and." You have subsection (1), then you have (2), that says "(a) there is an emergency; and (b)." Then subsection (3), which is the one we're dealing with now, has "(a) there is an emergency;" but there's no "and" there. If there was an "and" there, it would give me the same comfort I have in subsection (2).

1340

The Chair: Could we have a legal interpretation.

Ms Perun: The "and" at the end between clause 23(3)(d) and clause 23(3)(e) links all clauses together, so you do not have to repeat "and" after every clause.

Mrs Caplan: Are you sure?

Ms Perun: You read the entire section together. So "emergency" applies, the communication required, there's some issue around finding the communication. You read all of it together.

Mrs Caplan: In that case, we will not be supporting that amendment.

Mrs Boyd: I have a comment. It's scant comfort to a Spanish-speaking Jehovah's Witness, for example, that they've already received blood when they get a chance to communicate how they felt about that. That is a very common kind of situation, where people have very strong views about what they would or would not accept. Whatever we think of the decision they might have made, the reality is that we owe it to them to make every effort to find out what their wishes are.

Mrs Caplan: I'm not going to support the amendment. Mrs Boyd has used a case that, while some might say that's a very good example, my view is that in those

cases where people feel so strongly, they usually carry a card in their wallet. It is common practice in emergency rooms to look for that directive, especially since the court case that dealt with that. I don't have a concern with the case she's cited, because people who have that belief usually indicate in some way. The concern was more for someone with a language capability to be told and communicated with about the procedure to be undertaken, not where they held such a strong belief. That's why we're comfortable in voting against this amendment.

The Chair: Shall the amendment pass?

Mrs Boyd: Recorded vote, please.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Ron Johnson, Klees, Leadston, Parker, Tilson.

The Chair: The motion is defeated.

We are now dealing with section 23, as unamended. Shall that section pass? All those in favour? Carried.

We are proceeding to section 24, page 118. Mrs Boyd will be presenting an amendment to section 24.

Mrs Boyd: No, Mr Chair, we agreed yesterday that these amendments around the attaining of 16 years would be automatically withdrawn, since the main motion was withdrawn.

The Chair: Shall section 24, as unamended, pass? All those in favour? Agreed.

Moving on, shall section 25 pass? Carried.

Shall section 26 pass? Agreed.

We are now dealing with a new section, section 26.1.

Mrs Boyd: I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"Periodic review

"26.1 A health practitioner who is administering treatment to a person with the consent of another person shall periodically review whether treatment may be provided in a less restrictive or less intrusive manner."

That simply is a review function to ensure; I think we all have agreed in the discussions we've had here that part of the purpose of this act is to ensure that there is the least intrusive kind of treatment possible. We had some folks come in who said, for example, that if a substitute decision-maker had caused them to be admitted to a facility and their situation was such that they could return home, they would want to have some opportunity to have that treatment decision reviewed.

There are other situations, for example, where developmentally disabled people might for a time need to be institutionalized or for a time have a treatment, particularly a treatment now allowed by this government, and it might be wise to review whether or not the decision made at one point was made in others. This is simply, I would think, good medical practice, that you would constantly be looking for the least intrusive kind of treatment, but it's put in here because other people are making decisions on people's behalf. I think it's important for us to be

looking at that, particularly if we're talking about incarceration in some form of institution.

Mrs Johns: The government believes that with this amendment we're trying to legislate the professional standards of the health practitioners and we're certainly opposed to that. We believe that the colleges and their representative and regulative bodies will empower them and make sure that that happens, that their standards are maintained.

Mrs Caplan: We agree that this would be an intrusion into clinical practice and that the state should not intrude in clinical practice and therefore we will be voting against this amendment.

The Chair: Shall the amendment pass?

Mr Marchese: Recorded vote.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Ron Johnson, Klees, Leadston, Parker, Tilson.

The Chair: That's defeated. We are now proceeding to new section 26.2.

Mrs Boyd: I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"Hydration and nutrition

"26.2 A health practitioner who is administering treatment to a person shall ensure that the person receives adequate nutrition and hydration unless a member of the College of Physicians and Surgeons of Ontario certifies in writing that, in his or her opinion, the person is within 24 hours of death."

We've struggled with this whole issue around nutrition and hydration and heard very strong concerns expressed by physicians, by vulnerable people, by advocacy organizations about the issue of nutrition and hydration. While I have some concern that we may not have the optimum amendment here, I do think, given what we've heard, we should be putting some form of protection for people in the act to ensure that, at very least, they are offered food.

Several of those who came before us, the Alliance for Life Ontario, the Right to Life Association, expressed real concern that of course if food and hydration are withdrawn, people die. They don't necessarily die of their disease, they may die of starvation. It has been a well-known fact that as people near the end of their lives the decision may be made without their consent that they no longer require food, and I think that's a real problem.

I don't know whether 24 hours is the appropriate length of time and I don't know whether this wording is exactly what we wanted, but I think it is incumbent upon us to deal with the very real concerns that were brought forward to us around the issue of nutrition and hydration. I hope we can come to some conclusion around protections. We did certainly hear from a number of groups their concern that when they are incapable this decision may be taken on their behalf and is inappropriate.

The Chair: Thank you, Mrs Boyd. If it were passed, I assume it should be 26.1 rather than 26.2.

Mrs Boyd: We just wanted to add it, I believe.

The Chair: Your last one didn't go.

Mrs Boyd: Oh, that's right. I appreciate that.

Mrs Caplan: I think if there has been an amendment so far that defines how important this legislation is it's probably this amendment. These are the kinds of issues that this legislation contemplates dealing with. So the question becomes, how do you best deal with them? Our view is that the state should intervene in these decisions in the least possible way.

I am satisfied that there are ethics committees in all hospitals now that deal with these issues where there are no clear advance directives. The legislation does contemplate the notion of both best interests and best wishes, and I think it would be wrong for us to be as specific as this amendment is in statute because we would be doing two things. We would be interfering with the clinical judgements and we would be imposing a value that may be inconsistent not with individual wishes and beliefs but with the clinical judgements that go along with making those decisions. My argument really is that physicians do not make these decisions independently. In hospitals they make them on the advice of ethics committees which struggle with these issues all the time.

1350

It's in that spirit that we're not going to support this amendment. I understand the intent, I appreciate the intent, but just as Mrs Boyd said, "I'm not sure if it's 24 hours or what the wording should be," I don't think the state government can ever be in a position to write that into statute. It is much better left in the hands of the ethics committees which deal with the notion of best-interest wishes and the evolving technologies that are now allowing things to happen to people at the end stage of life that we have never contemplated before, and likely that will continue to evolve.

I think it is something that from time to time we want to talk about, but I don't think this amendment appropriately legislates anything near a consensus on this issue at this time. We will not be supporting it, but I wanted to speak a little bit about it because these are the difficult issues that this legislation contemplates dealing with.

Mrs Boyd: I am very little concerned about people who are ending their lives in hospital because I think Mrs Caplan is right. Most hospitals, particularly those that have entered into the delivery of palliative services, have dealt with these questions. They have very strong issues. I would suggest to you, Mr Chair, that does not mean there aren't lots of controversies in those hospitals around when palliation is the appropriate way and whether the withholding of food is part of palliation, and I think that continues to be a bit of an issue, even in those places. But those are not the places I'm worried about.

I'm worried about nursing homes, I'm worried about rest homes, I'm worried about homes for special care and I'm worried about all of our homes. More and more, people are ending their lives at home. They are under the care of a physician; very often, there's a nurse who comes in as part of home care who is a health practitioner who is there. They are the people who give the

advice to families or to paid caregivers who are to follow their instructions. I can tell you from personal experience that the issue around the offering of food continues to be an issue in that setting when people are nearing death. It concerns me that there is no obligation at all in those circumstances for there to be clarity about the obligation to offer food.

We tried to put it in the personal care, personal routines of daily living, or whatever we ended up calling it, as something that is expected to be a routine, and there would be those who would say, "No health practitioner would ever make that comment." I can tell you from personal experience that is not true. It is not true that when people come close to death there are not those who will say, "It is not necessary to offer food any longer because this person is in an end stage."

It is true that physicians need to be able to say it may be dangerous for the patient to offer food. Certainly there are conditions where it would no longer be appropriate, and we heard someone, one of the physicians who came forward, talked about certain extreme situations where you know a person is far from death but other than an intubation or something, which has been refused by the patient, the taking of food by mouth would not be appropriate. We all can understand that and that should be a professional decision.

But I can tell you that it definitely happens, and it happens in cases to the most vulnerable, and it may happen with the agreement of substitute decision-makers who don't really understand, because they accept a professional opinion, what will be the reality of their loved one starving to death rather than dying of whatever the condition is that has affected them.

Mrs Johns: First of all, I just want to say, with the greatest respect, that Mrs Boyd has brought us to this topic a number of times throughout the process and I really appreciate the thought process that she's gone through and that she's made all of us think about. It's a very important issue and I have spent a little time talking to people and trying to ascertain what we could do to alleviate some of the circumstances she's talking about.

I actually had read some of this and had legal counsel read some of Life and Death from the Senate of Canada committee, and it seems it's a very difficult issue. So from my standpoint, as I come to this, I'm going to tell you what my problems are with the motion more than my problems with the thought process, because I certainly appreciate what you're saying, and I think we all need to wrap around this and I don't know how that happens.

But my problem with the motion at this particular point is, first of all, it contradicts what we've tried to do in consent, which is if a person has a wish that we follow through on the wish, so that we say, if they have a prior capable wish, we accept that person's wish no matter what.

Moreover, I'm worried about the professional standards issue that Mrs Caplan brought up. That was one of my major issues with this process, and I believe that we have to have some ability to have the colleges take hold of this, or the hospitals.

The third thing is that the legal counsel brought to my attention that health practitioners are well aware of the

implications of the Criminal Code liability. The Criminal Code makes it an offence not to provide the necessities of life, and I think that's important for us to consider as we're looking at this proposal.

We won't be supporting it, not because we don't think it's an issue, but because we have come up with no way to legislate this, and, as you have said, 24 hours would be a big problem for me. I don't know what that magic number is even—

The Chair: Thank you, Mrs Johns.

Mr Marchese: I think what my colleagues raises are important points. Mrs Johns is agreeing that it's an important topic and she's read up on it and asked legal counsel to read up on it, but my colleague raises other questions. If someone states a wish that they want to starve near the end of their life, I suppose that's okay, right? But we're not dealing with that kind of circumstance obviously. My colleague also raises the question, what about nursing homes and other homes for special care where there are no ethics committees there or colleges of physicians there? How do you deal with that?

If we've got problems around the 24 hours, I understand that, but if you have concerns about this, would you argue that standing it down for a day wouldn't give you sufficient time to think about how else to reword this anyway so there's no point? Is that it?

Mrs Johns: We tried over the last week or two to come up with alternatives that would be acceptable, that wouldn't legislate, that would allow professional guidelines to take hold, and we haven't been able to come up with something, so I don't think the standing down would assist us.

The Chair: Shall the amendment carry?

Mr Marchese: Recorded vote.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Ron Johnson, Klees, Parker, Tilson.

The Chair: That's defeated. We're moving on to section 27, schedule A, a motion by Mrs Boyd on page 121 of your proposed amendments.

Mrs Boyd: I move that subsection 27(6) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by inserting "in a written statement" after "asserts" in the third line.

I think it's important to be sure that we all know what we are talking about here. The section is called "Reliance on assertion."

"(6) If a person who gives or refuses consent to a treatment on an incapable person's behalf asserts that he or she,

"(a) is a person described in subsection 18(1) or clause 22(2)(a) or (b) or an attorney for personal care described in clause 30(2)(b);

"(b) meets the requirement of clause 18(2)(b) or (c); or

"(c) holds the opinions required under subsection 18(4),

"a health practitioner is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances."

1400

This is the section of the bill which protects from liability any health care professional or any substitute decision-maker as long as they are acting in accordance with this bill.

It seems to us that the issue of asserts is a very weak position. It seems to us that it is not at all unreasonable to have a person clearly sign a written statement indicating that they meet all those conditions. It ensures that the substitute decision-maker understands the impact of what they are doing, understands exactly what is required of them by this act. That can all be set out and it's simply a matter of the person reading it and signing it if they in fact meet all those conditions.

David Winger in London, Ontario, in his presentation said:

"Further, a person may consent or refuse treatment under the new act if he or she is not present when the treatment is proposed but contacted in some other way. This is useful and practical. However, where a person purports to consent to or refuse treatment, knowing that a person of higher rank or equal rank exists, there should be a safeguard, such as a written statement, that the person with higher authority would not object and not merely 'belief.'"

As the section is presently worded, pursuant to section 27(6), health practitioners are permitted to rely on assertions made voluntarily by anyone giving or refusing treatment on an incapable person's behalf. It seems to us that it would be very appropriate for the person in this circumstance to submit to a written statement that they meet the requirements.

The Chair: Is there anyone else who'd like to speak in favour of this amendment? If not, I'll put the question.

Mr Marchese: Recorded vote.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Ron Johnson, Klees, Parker, Tilson.

The Chair: The amendment is defeated.

Shall section 27, as unamended, carry? All those in favour? Opposed? None? Carried.

Sections 28, 29 and 30 have no amendments, and with your permission, I shall ask you whether 28, 29 and 30 shall carry. Carried.

Section 31, there is an amendment by the opposition to 31(4) which is contained on 122.

Mrs Caplan: I move that paragraph 3 of subsection 31(4) of the Health Care Consent Act—

Interjection.

Mrs Johns: This is consequent.

Mrs Caplan: Oh, right. This has to be withdrawn.

The Chair: It is withdrawn?

Mrs Caplan: Right.

The Chair: We have to deal with section 31, as unamended, and section 32. Shall sections 31 and 32 carry? All those in favour? Carried.

Section 33, the third party has an amendment which is contained on page 123.

Mrs Boyd: This is a consequent amendment. We've already made the decision around 16 years of age. So I withdraw it.

The Chair: It's withdrawn. And 124?

Mrs Boyd: And 124, Mr Chair, so I believe that 33 and 34 are unamended.

The Chair: I take it we will have to move, shall section 33 and section 34 pass? Agreed.

We are now proceeding to section 35, and we have two amendments. The first is by Mrs Boyd.

Mrs Boyd: I move that subsections 35(1) and (2) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Application to determine compliance with s. 19

"(1) If consent to a treatment is given or refused on an incapable person's behalf by his or her substitute decision-maker, any person may apply to the board for a determination as to whether the substitute decision-maker complied with section 19.

"Parties

"(2) The parties to the application are:

"1. The applicant.

"2. The health practitioner who proposed the treatment.

"3. The incapable person.

"4. The substitute decision-maker.

"5. Any other person whom the board specifies."

The change here would mean that others other than the health practitioner could apply to the board, and that would mean that if in fact a friend—and we've heard this concern from the government members, that people can apply to the board if in fact they think the wishes of the person are not being followed, but the issue is that only the health practitioner can apply to the board in section 35. We believe that anyone who believes that the person's wishes are not being followed ought to be able to do that. That would answer some of the concerns that we heard from people about what you do as an individual and you have no standing. You're not the health practitioner. You're not the substitute decision-maker. You have no standing. How can you make an application to protect that person? This would simply make it possible for any person to make that application.

The Chair: Is there any—Mrs Caplan.

Mrs Caplan: If you're asking for anyone who'd like to speak in support of the motion—

The Chair: Anybody. I wasn't going to curtail it. I was trying to—

Mr Michael Brown: Expedite it.

The Chair:—expedite it. Is that fair?

Mrs Caplan: Yes. We'll be supporting this, because we do think it is reasonable. Particularly with all the protections that have been taken out of the legislation, at least a friend or an advocate should be able to apply to the board, as well as the other parties, the practitioner in particular, if they feel the desires, wishes or the determination around the substitute decision-maker, decisions that they're making, are not in the best interests.

It's a protection. It's not a lot, frankly. I don't think you'll have very many situations where someone else will make an application to the board, but we think this is a reasonable amendment given the protections that have been removed from the legislation.

Mrs Johns: The government's going to be opposing this motion.

Mrs Boyd: What else is new?

Mrs Johns: The reason we're going to be opposing the motion is as follows: Anybody could go before the board. If a person is upset by how the substitute decision-maker is making his decisions, they can go before the board and ask to become the substitute decision-maker. There is an ability for people to become the substitute decision-maker if they truly believe that the substitute decision-maker is acting ineffectively.

What will happen in this particular case is that people could come forward and say, "We don't like what is happening," and anybody could apply. For example, in the case of Mrs Singer, what could happen is that someone could come and say, "I don't like the treatment that Mrs Singer is offering to her son," and they could take this forward to the board to be able to allow the board to evaluate this process.

Mrs Caplan: Could you show us the section that would allow someone to apply to the board to be named as substitute instead? Which section is that?

Mrs Johns: The one who wants to be a substitute decision-maker.

Mrs Caplan: No, where they're not satisfied, where there is a substitute who's acting and it's appropriate within the hierarchy where that can be challenged before the board. Where is that?

Mrs Johns: Under section 31. I'll give you legal counsel, because—go ahead, 31(8).

Ms Perun: With respect to how do you get involved, obviously you realize we have the application for appointment of a representative. That's there already under section 31. So you can either apply to the board to become yourself appointed as a representative, or if you're not the representative, if someone else is the representative, any person can apply to the board under subsection 31(8) on page 82 of the legislation to terminate an appointment that has been made and therefore get yourself appointed instead. So that is available.

Mrs Caplan: In that case, we will not be supporting the amendment.

1410

Mrs Boyd: This only allows someone to apply to be the substitute decision-maker. A person may well believe that the substitute decision-maker is not following the wishes of the individual without wanting to substitute themselves for the substitute decision-maker.

The issue here is protection of the vulnerable person, and protection of that vulnerable person's right to have his or her wishes, as expressed, followed by a substitute decision-maker. It is not about enjoining a fight where someone else wants to take over as the decision-maker. It's a situation of protection of an individual whose wishes are not being followed by the substitute decision-maker who has been accepted.

I do not think we should force someone who believes that someone's wishes are being contravened, that the only recourse they can do is to take over that decision-making themselves. That's hardly appropriate. You don't ask that of the health care professional. You've got the health professional here being able to make that application. Why is the health professional the only one who can express that concern on the part of somebody without having to become the substitute decision-maker? This is absurd.

Mr Michael Brown: I'm quite satisfied that making an application to terminate someone as a substitute decision-maker is an appropriate protection for people. It seems to me that if you have a substitute decision-maker who is not respecting the wishes of the individual, then they should be terminated, and I think that is exactly the thing that should happen. If the person making the application does not wish to be the substitute decision-maker themselves, I don't think the legislation requires that, but another one could be—

Interjection: No.

Mr Michael Brown: It says terminate, I think, in the language of the bill. So I think it's totally appropriate. We also have to understand that the health practitioner him- or herself can approach the board and also seek the remedy.

The Chair: Thank you, Mr Brown. Are there no further comments? Did you want it recorded?

Mr Marchese: Absolutely.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Ron Johnson, Klees, Leadston, Parker, Tilson.

The Chair: The motion is defeated. We are now proceeding to subsections 35(6) and (7), a motion by Mrs Johns. Please proceed.

Mrs Johns: I'm on page 85 of the bill, page 126 of the motions, schedule A to the bill, subsections 35(6) and (7) of the Health Care Consent Act, 1995.

I move that subsections 35(6) and (7) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Deemed not authorized

"(6) If the substitute decision-maker does not comply with the board's directions within the time specified by the board, he or she shall be deemed not to meet the requirements of subsection 18(2).

"PGT

"(7) If the substitute decision-maker who is given directions is the public guardian and trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her."

This a minor wording change and a link is made to the section for determining who is entitled to make a substitute decision.

Mrs Caplan: Agreed.

The Chair: Agreed? The motion is carried.

Shall section 35, as amended, carry? Carried.

New section 35.1 to schedule A, Mrs Boyd.

Mrs Caplan: I'm going to ask you to rule. The purpose of this was to actually give effect to what was earlier refused by the government. The intention here was to set up who could apply to the board for the purpose of faradic stimulation. I'm hoping that the government has changed its mind, because this could stand alone. All it does is set up the mechanism whereby a health practitioner or a person's substitute decision-maker can apply to the board for permission to treat the person with electric shock as aversive conditioning, and it lays out the powers of the board. Unfortunately, the other part was refused, so I'd like to know whether the government's had a change of heart.

The Chair: I'm sorry. You're referring, I thought, Mrs Caplan, to the application to a court.

Mrs Caplan: No. You see, the difficulty that I have is this: The original amendment that we placed said that you had to apply to the Consent and Capacity Board for approval to use faradaic stimulation as aversive conditioning, except a Comsoc facility. The way this reads, it would require everyone to make application to the board, and that was not the original intent. While I hate to withdraw this, I'm going to have to. Unfortunately, because the government hasn't accepted the first amendment, this one doesn't stand alone because the intent would then require everyone to go, and that wasn't the intent. However, since the government didn't accept, and we voted against the application to the court, I would like a vote on this. If I could read it in so we could, for the record, have a vote—

The Chair: On the advice of legislative counsel, they would find that this is redundant in view of the loss of the formal amendment.

Mrs Caplan: I thought you might. I've been waiting to see if that was going to be your ruling. I was hoping that you might let a vote on it because—and this is no joking matter—the situation as it stands right now is that it's virtually wide open, subject to guidelines from two colleges, for the use of a very controversial procedure that, up until this point, has been either tightly controlled or banned in Ontario. While we all agree that the ban went too far, I'm concerned that Bill 19 goes too far in the other direction. We've been trying to put something in that would give some accountability and some requirement for permission outside of a Comsoc facility. So it's with reluctance that I accept your ruling.

The Chair: Thank you. I appreciate your cooperation. I do have the reputation of somehow being too accommodating, so it's nice to make my first ruling against anyone at this table.

Mrs Boyd: Somebody else has been saying that.

The Chair: We'll now move to section 36. Shall section 36 pass? Carried.

Section 37. We first have a government amendment.

Mrs Johns: I'm on page 128, and that would be page 86 of the bill.

I move that section 37 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following definition:

"'crisis' means a crisis relating to the condition or circumstances of the person who is to be admitted to the care facility."

Agreed?

Mrs Caplan: Agreed.

Mr Marchese: Agreed, yes, but if you want to give the explanation for—

Mrs Johns: I think that everybody knows that one of the deputants came forward—

Interjections.

The Chair: We're moving on to the next page, 129.

Mrs Boyd: As a result of the realization of the government that in fact "crisis" could have referred to a crisis of the health facility rather than the individual, we are delighted to withdraw this, and in fact think your wording is better.

The Chair: Let me deal with section 37, as amended. Shall it carry? Carried.

We are now dealing with section 38, and you're on page 130.

Mrs Johns: I move that section 38 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by inserting "or refused" after "given" in the fifth line.

It makes it clear that a substitute decision-maker may give or refuse consent to admission to a health care facility. We had a deputant speak to that issue and we just clarified it.

The Chair: Agreed? Agreed.

Mrs Johns: Are we on to 131 now?

The Chair: You're on to 131.

Mrs Johns: I move that section 38 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsection:

"Opinion of board or court governs

"(2) If a person who is found by an evaluator to be incapable with respect to his or her admission to a care facility is found to be capable with respect to the admission by the board on an application for review of the evaluator's finding, or by a court on an appeal of the board's decision, subsection (1) does not apply."

Basically, this clarifies that a board or court decision that a person is capable prevails over the health practitioner's view.

1420

Interjection.

Mrs Caplan: Look, if you want take the time. I don't want you to complain at the other end that we don't get through.

Mr Marchese: Just as a point, usually explanations are not very long, and even though we agree, it's important for those watching to hear the explanation because it's not always entirely understandable. So I would like that explanation, if you don't mind.

The Chair: You're entitled to that. Now I'm confused. That was the addition of (2) to section 38? There is no (1), though, in my book. Am I in the wrong book?

Interjection: That was the other amendment.

The Chair: Oh, sorry. Shall section 38, as amended, pass? Agreed.

Shall section 39 pass? Carried.

A new section, 39.1.

Mrs Boyd: I move that the Health Care Consent Act, 1995, as set out in schedule A of the bill, be amended by adding the following section:

"Notice of finding

"39.1 If an evaluator finds that a person is incapable with respect to admission to a care facility, the evaluator shall ensure that the person is advised of the finding of incapacity."

Mrs Caplan: Actually, we're going to support this one. I know that we've had a lot of discussions about rights advice. This doesn't deal with rights advice; this is another way of just having a very simple obligation for the purpose of admission. I think putting someone into a long-term-care facility is a significant lifestyle change. In many cases they may not understand and fully appreciate, but they do have the right to appeal the finding. We know that there have been abuses in the past where the family can sometimes find a practitioner who will make the finding of incapacity to allow the relative to be put into a facility against their wishes. If they're not told that they do have that finding, they will not then know of their right to appeal. So we're going to support this one and I hope the government will. If you're not going to do a broad rights advice, you're not going to have an obligation to inform broadly, this is narrow and I think it's reasonable.

Mrs Johns: From the information I have seen, what we want to do with evaluators is we want to work at providing information and rights advice through the long-term-care policy. So what we talked about previously yesterday with respect to long-term policy and how we could implement it through PCSs is part of what we're going to be talking about when we talk about this today.

As you remember, yesterday I gave everyone the policy for long-term care, and it suggests in it, on the second page, "The guidelines will describe the role of an evaluator in situations where part IV is applied." We have to change that to parts III and IV. "The guidelines will also explain what the evaluator's responsibilities are regarding communicating a finding of incapacity to a recipient of a personal assistance service and admission to a long-term-care facility and providing written rights information."

From my standpoint, this is different than in the previous section, where we had health care practitioners, where we had a number of different colleges and we were able to deal with it through the colleges and the guidelines. This is very much different here, because we at the ministry have some control over these as a result of our long-term-care policies. We believe that policy will give us consistent application with respect to talking about incapacity and the rights application. So we believe there's a better way to do it than is being presented here in this amendment.

The Chair: Does the government oppose it?

Mrs Johns: Yes.

Mrs Caplan: Actually, if Mrs Boyd were to amend her legislation or accept a friendly amendment that would state "and the procedure to be defined by regulation," that would actually implement what you intend to do and you would just have it in statute that you're going to do it. That would give people some comfort. So since it is your intent to do it by guideline, it would be nice—

Mrs Boyd: I accept that friendly amendment.

Mrs Johns: Can I let legal counsel talk to that, to let us know what the pros and cons would be of that?

The Vice-Chair: Excuse me. If we are going to accept it as a friendly amendment, my understanding is that you have to withdraw and reword the motion.

Mr Marchese: Re-read it.

The Vice-Chair: Re-read it, that's right.

Mrs Boyd: Okay. Then I move that the Health Care Consent Act, 1995, as set out in schedule A of the bill, be amended by adding the following section:

"Notice of finding

"39.1 If an evaluator finds that a person is incapable with respect to admission to a care facility, the evaluator shall ensure that the person is advised of the finding of incapacity and the procedure will be set down by regulation under the Long-Term Care Act."

Ms Perun: I just wanted to point out that in Bill 19, with respect to part IV, the amendments to other acts, the government is proposing amendments to all three long-term-care statutes: the Charitable Institutions Act, the Nursing Homes Act and the Homes for the Aged and Rest Homes Act.

If I might take you to the Charitable Institutions Act, page 36, there is a reg-making power that has been added, "prescribing and governing the obligations of placement coordinators and others in relation to ensuring that persons seeking admission to an approved charitable home for the aged"—in this case—"are provided with information about their rights and assistance in exercising their rights, including prescribing the information or assistance that must be given" etc. So the regulation-making power is already there. That has been added to the three long-term-care statutes to which part III applies.

Mrs Boyd: Our issue is not that the regulation-making power is there under those acts. Our issue is that there be an obligation for evaluators to tell a person that they have been found incapable, and then the way in which they do that can be regulated under those acts. We're quite happy for that to happen, but we believe that an obligation must be there. Somewhere here, folks, we have to realize that people have a right to know that they have been found incapable.

Certainly, admission to a long-term-care facility—I must tell you, security of the person and all of that under the Charter of Rights comes into effect as much in terms of incarceration, if you like, in a long-term-care facility as it would in a mental hospital. Let's get real here. If people are incapable and they're going to be forced to leave their homes and move into a long-term-care facility by a decision of someone else, they have a right to know that they've been found incapable. That's all we're asking. You can do it however you decide to prescribe it under the various long-term-care acts, that's fine, but there should be an obligation that these people know that they've been found incapable.

Mrs Caplan: I want to just restate the point, and I'm grateful that you've pointed out to us that the reg power is there under the Long-Term Care Act. I'm also grateful that you've told us that it is your intention to do it. What's important is that you have the statutory obligation. That protects the person, because regulations and guidelines can always be changed, and they're changed—

Mrs Boyd: Policy never protected anybody.

Mrs Caplan: Policy is very different than statute, and on this issue, since you intend to do it anyway, I don't think that an obligation and including it in the statute will fetter you in any way. It's just putting in the statute what you tell us you're going to do. So it's a good-faith test and I think it's important for people to know that that is a protection that is in the statute, that the intention is clear and that it be here in the Health Care Consent Act, which then is referenced in the long-term-care legislation, and that's very appropriate.

If there's a different wording that you would like, we would certainly be happy to let you word it in whatever way you want, because we wouldn't want you to go through the exercise of double regs, but I think the wording that we have would accommodate what you have in the legislation. I can't think of any reason why you would object to putting this in the statute, since you plan on doing it and you have it, and I have the paper that you gave us yesterday. So I'm hoping that you'll support this amendment, because it's necessary. It's not something that should be left entirely to policy.

1430

Mr Marchese: This is the simple point. A number of people told us that they want to know; they want to be advised of the finding of incapacity. That's the principle. Do you agree with that or not? If you agree, why would we disagree with putting that in statute? That's really the significant point. How you do it, as the other colleagues have said, is entirely up to you. But once you have the principle in place, then that takes care of our concern around this and the concerns that have been expressed by the different people who have come in front of this committee.

The Vice-Chair: All in favour of the motion?

Mr Marchese: A recorded vote, please, Mr Chair.

Ayes

Boyd, Caplan, Grandmaître, Marchese.

Nays

Johns, Klees, Leadston, Parker, Tilson.

The Vice-Chair: The amendment is defeated. Moving on to a new section, schedule A. I believe you'll find that on page 133, and it would be the New Democrats.

Mrs Boyd: Mr Chair, this is withdrawn in light of the intransigence of the government around providing rights advice to incapable people.

Mr Marchese: It's getting worse, David.

Mrs Boyd: As is 134.

The Vice-Chair: As is the alternate. Moving to section 40, schedule A; again Mrs Boyd.

Mrs Boyd: I move that paragraphs 1 and 2 of subsection 40(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable, the person shall give or refuse"—I'm sorry, Mr Chair, this is an age issue and it is withdrawn because we've already made that determination. I beg your pardon.

The Vice-Chair: Shall section 40 carry, then? Carried. Sections 41, 42, and 43? Carried.

Section 44, schedule A, a government amendment.

Mrs Johns: We're on page 136 and we're talking about section 44, which is on page 88 of the bill.

I move that clause 44(1)(b) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"(b) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that the person who was found to be incapable intends to apply, or has applied, to the board for the review of the finding; and,"

"...or has applied" is the new section to the act. We've talked about that before; that they are going to be going forward to the board is important recognition that we should not go forward.

The Vice-Chair: Agreed? Carried.

Another government amendment.

Mrs Johns: Page 137, page 88 of the bill.

I move that clause 44(2)(b) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"(b) before the admission takes place, the person responsible for authorizing admissions to the care facility is informed that,

"(i) the incapable person intends to apply, or has applied, to the board for appointment of a representative to give or refuse consent to the admission on his or her behalf, or

"(ii) another person intends to apply, or has applied, to the board to be appointed as the representative of the incapable person to give or refuse consent to the admission on his or her behalf; and,"

This is the same explanation again.

Mrs Caplan: Agreed.

The Vice-Chair: Mrs Johns, a third amendment.

Mrs Johns: Page 138.

I move that subsection 44(3) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "shall not authorize the person's admission, and shall take responsible steps to ensure that the person's admission is not authorized" in the third, fourth, fifth and sixth lines and substituting "shall take reasonable steps to ensure that the person's admission is not authorized and that the person is not admitted."

This is a fine distinction in clarification. If there's any comment on that, I'll discuss it further.

Mrs Caplan: The only comment I have is on the fourth line down. I think you meant "reasonable," as opposed to "responsible."

Mrs Johns: Sorry, thank you very much.

Mrs Caplan: In that case, approved.

Mrs Johns: Carried.

Page 139.

I move that subsection 44(5) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Admission for definite stay

"(5) This section does not apply to a person's admission, or the authorization of a person's admission, to a

care facility for a stay of a definite number of days not exceeding 90."

A couple of the deputants came forward and suggested that there should be a time frame associated with this and we picked 90 days.

The Vice-Chair: Carried.

The final amendment to this section is a Liberal amendment.

Mrs Caplan: It's a consequent amendment, so we will withdraw.

The Vice-Chair: Shall section 44, as amended, carry? Carried.

Sections 45 through 48? Carried.

Section 49, schedule A, Liberal amendment.

Mrs Caplan: No, page 141. I think you have another amendment, a government amendment; 140 was withdrawn.

Mrs Johns: I don't have the amendment we're talking about; 141 is my amendment.

Mrs Caplan: That's what he called for. He called for me, but I said it's yours.

Mr Tilson: Page 140, the Liberal amendment, is withdrawn.

The Vice-Chair: The amendment on page 140 was not moved. So we're on 141 now.

Mrs Johns: We're on page 92 of the bill.

I move that subsection 49(5) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Appointment

"(5) In an appointment under this section, the board may authorize the representative to give or refuse consent on the incapable person's behalf,

"(a) to his or her admission to the care facility; or

"(b) to his or her admission to any care facility, or to any of several care facilities specified by the board, whenever an evaluator finds that the person is incapable with respect to the admission."

The main clarification is that the future admission decision can only be made for the person by their representative if an evaluator finds that the person is incapable at a future time.

The Vice-Chair: Discussion? Carried.

Section 49, as amended? Carried.

Section 50, schedule A, an NDP amendment.

Mrs Boyd: This is a consequent amendment on age and is withdrawn, Mr Chair; similarly the next one, the one that is proposed 51, is a consequent amendment.

The Vice-Chair: Shall sections 50 and 51 carry? Carried.

Section 52, schedule A, an NDP amendment.

Mrs Boyd: I move that subsections 52(1) and (2) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Application to determine compliance with section 40

"(1) If consent to admission to a care facility is given or refused on an incapable person's behalf by his or her substitute decision-maker, any person may apply to the board for a determination as to whether the substitute decision-maker complied with section 40.

"Parties

"(2) The parties to the application are:

"1. The applicant.

"2. The person responsible for authorizing admissions to the care facility.

"3. The incapable person.

"4. The substitute decision-maker.

"5. Any other person whom the board specifies."

This is a similar amendment to the one that the government refused to accept in terms of the health care practitioner in another setting. We believe that it ought to be possible for any person to make this application and we do not accept the view of the government that determination of it is sufficient.

The Vice-Chair: Discussion? All those in favour?

Mr Marchese: A recorded vote again.

Ayes

Boyd, Marchese.

Nays

Caplan, Doyle, Grandmaître, Johns, Klees, Leadston, Parker, Tilson.

The Vice-Chair: That amendment is defeated. Moving to the government amendment, section 52.

1440

Mrs Johns: I move that subsections 52(6) and (7) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Deemed not authorized

"(6) If the substitute decision-maker does not comply with the board's directions within the time specified by the board, he or she shall be deemed not to meet the requirements of subsection 18(2), as it applies for the purpose of section 39.

"PGT

"(7) If the substitute decision-maker who is given directions is the public guardian and trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her."

We have discussed this previously.

The Vice-Chair: Those in favour? Carried.

Section 52, schedule A, as amended? Carried.

Section 53, schedule A, government amendment.

Mrs Johns: Amendment 146, on page 94.

I move that section 53 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Application of part

"53. This part applies to personal assistance services."

We're going to have a lot of this through the next time as we've changed "plan" to "services."

Mrs Caplan: Is there any way, legislative counsel, that we can lump them all together and just let that go? The phrase "personal assistance services" is consistent.

Ms Gottheil: No, there was no way to do a global motion, because sometimes it's singular, sometimes it's plural and sometimes additional or different changes had to be made to the section.

Mrs Caplan: Does she have to read it in every time?

Interjection: Go ahead, Mrs Johns.

Mrs Caplan: Okay. Keep going.

Mrs Johns: Thank you for trying. I appreciate it.

Mrs Johns: Page 147.

The Vice-Chair: Excuse me. Section 53 as amended, then? Carried.

Section 54, schedule A, government amendment.

Mrs Johns: I move that the definition of "substitute decision-maker" in section 54 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"substitute decision-maker" means a person who is authorized under section 56 to make a decision concerning a personal assistance service on behalf of a recipient who is incapable with respect to the service."

Mrs Caplan: That's clear.

Mrs Johns: "Recipient" and "plan" are changed.

The Vice-Chair: Carried. Section 54, as amended? Carried.

Section 55.

Mrs Johns: I move that section 55 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Decision on incapable recipient's behalf

"55(1) If a recipient is found by an evaluator to be incapable with respect to a personal assistance service, a decision concerning the service may be made on the recipient's behalf by his or her substitute decision-maker in accordance with this act.

"Opinion of board or court governs

"(2) If a recipient who is found by an evaluator to be incapable with respect to a personal assistance service is found to be capable with respect to the service by the board on an application for review of the evaluator's finding, or by a court on an appeal of the board's decision, subsection (1) does not apply."

Mrs Caplan: Agreed.

The Vice-Chair: Carried. Section 55, as amended, carried.

Section 56, schedule A.

Mrs Johns: I'm on page 149.

I move that section 56 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Determining who may make decision

"56(1) For the purpose of determining who is authorized to make a decision concerning a personal assistance service on behalf of a recipient who is incapable with respect to the service,

"(a) section 18, except subsections 18(5) and (6), applies with necessary modifications;

"(b) if no person described in subsection 18(1) meets the requirements of subsection 18(2), the public guardian and trustee may make the decision concerning the personal assistance service; and

"(c) if two or more persons who are described in the same paragraph of subsection 18(1) and who meet the requirements of subsection 18(2) disagree about the decision to be made concerning the personal assistance service, and if their claims rank ahead of all others, the public guardian and trustee may make the decision in their stead."

The Vice-Chair: All those in favour? Carried. Section 56, as amended? Carried.

A new section to schedule A, section 56.1, an NDP amendment. Mrs Boyd.

Mrs Boyd: I move that the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"Notice of finding

"56.1. If an evaluator finds that a person is incapable with respect to his or her personal assistance plan, the evaluator shall ensure that the person is advised of the finding of incapacity."

This again is the issue around ensuring that people are advised when they have been found incapable. We intend to continue to make these motions because we keep hoping that the government will understand how important this issue is.

Mrs Caplan: I'm anticipating what Mrs Johns is going to say. They intend to do this by guideline. She's nodding her head. If I thought it would help, I would add a friendly amendment that would allow it to be done by guideline. Since she's not going to accept it anyway, why bother wasting the time? But I want to go on the record that we're supporting this amendment even though we're not going to bother amending it because we just think that if you're going to do it, you should make it clear in the statute. Everyone has asked for clarity. Inquest after inquest has asked for clarity. If you're going to do it by policy and you're going to do it by regulation, it is good law and good practice and good public policy to be clear about it and put it up front in the statute.

I haven't heard a good reason from you as to why on these, where you're going to do it and you're going to do it by guideline, that you wouldn't have it clear in the statute of that intention. I'd ask that perhaps you try and give us that explanation. I don't want to waste your time, but I think this is important that we find out what your aversion is to being clear about that, since it is your intention to do that and you do have the power and you do have the control and long-term-care legislation is yours and you're not dealing now with the self-regulating discretion of the colleges.

I don't understand why you didn't put the last one in, and I don't understand why it's the decision of your government to leave the act silent.

Mr Marchese: Just to repeat again, this is, in our view, a basic, fundamental right. People are entitled to know. Deputation after deputation told us the same thing. We're not alone in saying this. They've heard it; we've heard it. We're saying if you're going to do it in the guidelines, this informs the people drafting the guidelines as to what it should do and say. If you don't have that, we don't know what those guidelines will do and say. If you say that's what it's going to do, you should not have any aversion to stating it in the act. It's a basic, fundamental right. It should be seen in the act and people want to see that.

Mr Marchese: Recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Marchese.

Nays

Doyle, Johns, Klees, Leadston, Parker, Tilson.

The Vice-Chair: That motion fails.

Moving on to a new section, schedule A, section 56.2, another NDP amendment.

Mrs Boyd: This is withdrawn, as is the next one, in view of the government's intransigence about ensuring that people are informed about their rights.

Mr Marchese: That's right, intransigence. Entrenched.

Mrs Caplan: I haven't made any comment about you throwing in the towel or giving up or any of those things that you said about us. I won't make those comments. Hansard, don't record it.

The Vice-Chair: Section 57, schedule A. Ms Johns, government amendment.

Mrs Johns: This is a long one so people can have a copy while I'm doing this. This is again about personal assistance and recipients.

I move that section 57 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Principles for making decision

"57(1) A person who makes a decision on an incapable recipient's behalf concerning a personal assistance service shall do so in accordance with the following principles:

"1. If the person knows of a wish applicable to the circumstances that the recipient expressed while capable and after attaining 16 years of age, the person shall make the decision in accordance with the wish.

"2. If the person does not know of a wish applicable to the circumstances that the recipient expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the recipient's best interests.

"Best interests

"(2) In deciding what the recipient's best interests are, the person shall take into consideration,

"(a) the values and beliefs that the person knows the recipient held when capable and believes he or she would still act on if capable;

"(b) any wishes expressed by the recipient with respect to the personal assistance service that are not required to be followed under paragraph 1 of subsection (1); and

"(c) the following factors:

"1. Whether the personal assistance service is likely to,

"(i) improve the quality of the recipient's life,

"(ii) prevent the quality of the recipient's life from deteriorating, or

"(iii) reduce the extent to which, or the rate at which, the quality of the recipient's life is likely to deteriorate.

"2. Whether the quality of the recipient's life is likely to improve, remain the same or deteriorate without the personal assistance service.

"3. Whether the benefit the recipient is expected to obtain from the personal assistance service outweighs the risk of harm to him or her.

"4. Whether a less restrictive or less intrusive personal assistance service would be as beneficial as the personal assistance service that is the subject of the decision.

"5. Whether the personal assistance service fosters the recipient's independence.

"Confinement, monitoring devices, restraint

"(3) Subject to paragraph 1 of subsection (1), the person shall not give consent on the recipient's behalf to

the use of confinement, monitoring devices, or means of restraint unless the practice is essential to prevent serious bodily harm to the recipient or to others or allows the recipient greater freedom or enjoyment.

"Participation

"(4) The person shall encourage the recipient to participate, to the best of his or her ability, in the person's decision concerning the personal assistance service."

1450

The Vice-Chair: Discussion? All those in favour?

Mrs Boyd: Could I just ask a question? What is the definition of "unless it is impossible to"—

Mrs Johns: Oh, paragraph 57(1)2? I'll let legal counsel talk to it after, but we talked about it a fair amount as we went through the process. If someone puts in their living will, for example, something about them wanting this to happen and that opportunity isn't allowed to them because their disease is different, for example, then we wouldn't be allowed to do that. So, in this case, the personal assistance service wouldn't be available to them.

Ms Perun: The main reason why this language is here in this part, but it also is in part III and part II, is to make it consistent with the provisions in the Substitute Decisions Act, which provide that a guardian and an attorney under power of attorney must comply with wishes unless it's impossible to comply with the wishes. So there was a dual standard for guardians and attorneys under the Consent to Treatment Act vis-à-vis the Substitute Decisions Act, so basically this provision makes the standard the same in both acts.

Mrs Caplan: Can you think of an example of where it might be impossible in that situation to comply with an individual's values or beliefs? The only thing I could think of was if they had stated their desire for a cure and there was no cure.

Mrs Boyd: It's a service, not—

Mrs Caplan: I'm saying, you know, this is a service. Unless this would reflect the fact that they want something that they can't afford. Is that what it's about?

Mrs Johns: No, no. Let me get the long-term care to discuss that issue because that's certainly not what I've heard, although I asked about it in treatment versus personal assistance service—

Mrs Boyd: Treatment I understand.

Mrs Caplan: That's right.

Mrs Boyd: If somebody said, "I don't want to be catheterized," and you're in a situation where you have to do that, I really understand that. Treatment's not a problem. On this one, and since it's been raised, Helen, let me tell you where I think the issue is. That's what I want an understanding of, and that is around—not services that are provided in the facility that are not paid for, but there may be services that are over and additional to where someone in an advance directive has said, "I'm rich and I can afford Cadillac service and I'm willing to pay for that." Those wishes are clear. The substitute, can they say no and override that?

The only time I would think they could be able to under this is if there's no more money in the bank. If the person is no longer rich and they've used all their money, therefore it's impossible to comply with that wish, but if

there's any other circumstance where they could not comply with that wish, I'd like to know an example of what you mean.

Mrs Johns: Let me just try and get some clarification here and then we'll decide what we want to do with it.

Ms Anna Burwash: My name is Anna Burwash. I'm in the long-term-care policy branch.

I think some issues may come up in a long-term-care facility. We would be assuming that if a person was in a long-term-care facility that that decision had been made looking at a number of factors, and of course as you've indicated, money might be one of them. But there may be something related to either how many times per day the service, a week or whatever, that the service is provided, or something else that simply cannot be accommodated within the setting that the person is in.

Mrs Johns: Give them the example of food.

Ms Burwash: It might something to do with food, for example. They still are going to get fed, but there may be some very specific wish that simply cannot be accommodated in the kind of setting that the person is in.

Mrs Johns: Can I give you an example, one I can think of for this? For example, in Exeter we don't have a Jewish home and so we wouldn't be providing kosher food, would be one example, and so a person couldn't get kosher food in our long-term-care facility. Now, I don't know if that's an example.

Mrs Caplan: That is a good example.

The Vice-Chair: Ms Caplan, I'm sorry. Ms Boyd was next on the list.

Mrs Boyd: If that's the example, then we're a little bit concerned, because probably the person shouldn't have been admitted to that facility under those circumstances. They would know very well when they were expressing their wishes that they lived in a place where that was not possible so they likely wouldn't express it in their wishes under those circumstances. That is exactly what we're worried about, and we're worried about people who have, for example, said, "I wish to be at home." They have enough money to be at home, but somebody may decide that the services that they want at home are impossible to comply with.

For example, they might say, "I want to stay at home but I want the opportunity to enjoy a walk in my wheelchair every day." Now, it may be that staying at home, normally they'd be on a second floor and they couldn't do that, and then it would be surely easy for a substitute decision-maker to say, "I can't comply." Whereas what you might want to say is, "I can't comply with this on the second floor but maybe they should be on the first floor so that in fact we can comply with that service."

Those are the kinds of things that we worry about. Because who decides that it's impossible to comply, and what does that mean? It may have a real effect in terms of the wishes that people have. It may in fact be the reason that they made certain wishes known in the first place. That's fairly important.

Mrs Caplan: If I can, Mr Chairman? I don't want to belabour the point, but I think that it is interesting to think about, or try and contemplate, the kinds of things that this would allow to be overruled. I think it's reasonable for someone to say, as a value or a wish, that, "I'd

like to be able to go outside every day unless the weather is bad and it's raining"—that's reasonable—"but if the weather is nice I'd like to be taken outside every day." If the care plan in the long-term-care facility can value and accommodate that wish, but if there's a reduction in staff or there are no volunteers but it was part of the understanding when the person went into that home that that was part of the agreement for their personal services that they would be taken out into the fresh air every day when the weather was nice, can this overrule that simply because you're short-staffed that day and it's not possible to get the person outside?

Ms Burwash: I would view going outside every day as a pretty reasonable request.

Mrs Caplan: So would I.

Mrs Boyd: So would I.

Ms Burwash: I don't see that that's the kind of thing that a person would be able to make a credible case that that was impossible.

Mrs Caplan: The question is, who'd be the arbiter of what's impossible? I agree with you. That's why I used that very simple example, "If I'm able to, take me"—

Mrs Boyd: It happens all the time.

Mrs Caplan: Oh, yes. These are the sorts of issues that all we want to know here is, how are you going to give force to this amendment? We like all of it, except for, who's going to determine if it's impossible?

The Vice-Chair: Excuse, Ms Caplan. We'll give Ms Johns an opportunity to respond now.

Mrs Johns: I just wanted to give long-term-care another alternative so we could hear it, and then we'll bring up somebody else and we'll see what we can come up with. I think this is an interesting argument. It certainly isn't our intention for this to happen, so I think that we need to hear all the sides and hear the implications.

1500

Mrs Caplan: I don't mind if you want to stand it down for a couple of minutes—

Interjections.

Mrs Johns: I think we need to hear these arguments to decide if this is valid. I have policy people behind me saying, "Hey, what about section 35?" and I think we need to hear about that before we talk about this also. Just go ahead.

Ms Jutta Auksi: My name is Jutta Auksi. I'm with the Ministry of Health. I just wanted to point out as well that it would be, in the first instance, the substitute decision-maker, in applying the substitute-decision criteria, who would be determining whether it was impossible. If people felt there was a problem with that decision, then the same remedies would exist as discussed earlier with the treatment decision, that either the health practitioner or, in this case, sorry, the person who is responsible for the personal assistance service could apply to the board for a compliance review, or any person could apply to the board to become the decision-maker in place of the person who was making what was thought to be an inappropriate decision.

So if, in applying those criteria, there was something really wrong and questionable, then there is a way to address it.

Mrs Caplan: In the simplest case, using my going outside example, if it was my expressed wish to go outside every day, weather permitting, and my substitute decision-maker said, "I don't want you to take her outside any more. I think it's impossible to take her out because she can't sit in the wheelchair; you'd have to take her out flat on a trolley," and they made that decision and a care provider said, "Yes, it's a lot of bother for us to put her on a trolley and take her out every day," I wouldn't get to go outside?

Mrs Johns: I just wanted to bring an analogy they gave me to the forefront here.

Mrs Caplan: Could you answer my question first?

Mrs Johns: Can we answer that question?

Ms Auksi: It would depend on whether this issue came up in the personal service decision under this act, whether this act was what would be used to address the issue or whether, for example, there might be some—like if someone had a complaint with regard to the services they were getting in a long-term care facility, whether there would be another vehicle for addressing that concern. Anna Burwash might be in a better position to answer that than I would. Not everything would be addressed through the consent process per se.

The issue we're talking about is not whether the service is available but whether the substitute consents or doesn't consent to it.

Mrs Caplan: Isn't the issue that we're talking about overruling of a wish or a value? I've used something very simple. We all agree it's a good idea, if people are able, to take them outside every day. Would this amendment that you've brought forward allow my substitute decision-maker to say: "It's too much bother. She doesn't know anyway where she is or what time of day it is, whether it's morning or night. I think it's impossible to put her on a trolley and take her out when the sun is shining, so don't bother, because I don't like her very much."

Ms Burwash: I just don't think that the substitute decision-maker would be able to make a credible case that that was impossible.

Mrs Caplan: I'm looking for that answer.

Mrs Boyd: The section actually says if the person does not know of a wish applicable to the circumstances, okay? Or, if it's impossible. So we're not worried about where you don't know about a wish; it's where it's impossible to comply with the wish. I suppose some of the most common ones are issues around toileting, around ambulation. It's very hard sometimes to ensure that people get the kind of services that they expect around being walked, getting the exercise that they need. In a lot of long-term-care facilities, in fact, we hear providers complaining that as their resources get tighter and tighter, their ability to keep people going and ambulatory becomes more and more difficult.

I guess our concern here is, if it's impossible to comply with because of the priorities and the decisions made about resources in a long-term-care facility, that's not appropriate, and it's not clear to me that that isn't going to be the situation here.

It's the same issue as it was around crisis, that it has to be the crisis for the person, not the crisis for the

facility. You made that change and I really appreciate it. I guess the more we talk about this the more I get concerned about whether this is impossible for the facility or the caregiver in an appropriate way or not. It's very hard.

Mrs Johns: I think that's a good point, and on that issue I think I'll give the legal counsel a few minutes to think about it. As I said, I apologize for the standing down, but it's something that hasn't come up with us before. We'll see if we can come to some other suggestion or if they will come back and talk to me after. I won't hold everybody up on this one.

The Vice-Chair: We'll stand down section 57, schedule A. What about the amendment, Mrs Boyd, your amendment following, subsection 57(1)?

Mrs Boyd: That is now withdrawn, because of course it's the age amendment.

The Vice-Chair: Understood. Section 58, schedule A.

Mrs Johns: I'm on page 156, a government motion, and it's on section 58.

I move that section 58 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Information

"58. Before making a decision on an incapable recipient's behalf concerning a personal assistance service, a substitute decision-maker is entitled to receive all the information required in order to make the decision."

We're changing "service" and "recipient."

The Vice-Chair: Carried? Agreed. Section 58, as amended? Carried.

Section 59, schedule A, Mrs Johns.

Mrs Johns: I move that section 59 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Change of decision

"59. Authority to make a decision on an incapable recipient's behalf concerning a personal assistance service includes authority to change the decision at any time."

The Vice-Chair: Carried? Agreed. Section 59, as amended? Carried.

Section 60, Mrs Johns.

Mrs Johns: Page 158: I move that section 60 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by,

(a) striking out "resident" in the third line and substituting "recipient"; and

(b) striking out "described in the resident's personal assistance plan" in the fifth and sixth lines.

The Vice-Chair: Carried? Carried. Section 60, as amended? Carried.

Section 61, Mrs Johns.

Mrs Johns: I move that section 61 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Personal assistance service provided

"61(1) If a person provides a personal assistance service to a recipient in accordance with a decision made on the recipient's behalf that the person believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this act, the person is not liable for providing the personal assistance service without consent.

"Personal assistance service not provided

"(2) If a person does not provide a personal assistance service to a recipient because of a decision made on the recipient's behalf that the person believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this act, the person is not liable for failing to provide the personal assistance service.

"Reliance on assertion

"(3) If a person who makes a decision on an incapable recipient's behalf concerning a personal assistance service asserts that he or she,

"(a) is a person described in subsection 18(1), as it applies for the purpose of section 56;

"(b) meets the requirement of clause 18(2)(b) or (c), as it applies for the purpose of section 56; or

"(c) holds the opinions required under subsection 18(4), as it applies for the purpose of section 56,

"a person who provides a personal assistance service to the recipient is entitled to rely on the accuracy of the assertion, unless it is not reasonable to do so in the circumstances."

The Vice-Chair: Any discussion? All those in favour? Carried. Section 61, as amended? Carried.

Section 62, government amendment, Mrs Johns.

Mrs Johns: Page 161: I move that section 62 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Person making decision on recipient's behalf

"62. A person who makes a decision on a recipient's behalf concerning a personal assistance service, acting in good faith and in accordance with this act, is not liable for making the decision."

The Vice-Chair: All those in favour? Carried. Section 62, as amended? Carried.

Section 63, Mrs Johns.

1510

Mrs Johns: Page 162: I move that subsections 63(1), (2) and (3) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Application for review of finding of incapacity

"(1) A recipient may apply to the board for a review of an evaluator's finding that he or she is incapable with respect to a personal assistance service.

"Exception

"(2) Subsection (1) does not apply to,

"(a) a recipient who is a guardian of the person, if the guardian has authority to make a decision concerning the personal assistance service;

"(b) a recipient who has an attorney for personal care, if the power of attorney contains a provision waiving the recipient's right to apply for the review and the provision is effective under subsection 50(1) of the Substitute Decisions Act, 1992.

"Parties

"(3) The parties to the application are:

"1. The recipient applying for the review.

"2. The evaluator.

"3. The member of the service provider's staff who is responsible for the personal assistance service.

"4. Any other person whom the board specifies."

The Vice-Chair: Any discussion? All those in favour? Carried. Section 63, as amended? Carried.

Section 64, a government amendment, Mrs Johns.

Mrs Johns: Page 163. I move that subsections 64(1) to (5) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Application for appointment of representative

"(1) A recipient who is 16 years old or older and who is incapable with respect to a personal assistance service may apply to the board for appointment of a representative to make a decision on his or her behalf concerning the service.

"Application by proposed representative

"(2) A person who is 16 years old or older may apply to the board to have himself or herself appointed as the representative of a recipient who is incapable with respect to a personal assistance service, to make a decision on behalf of the recipient concerning the service.

"Exception

"(3) Subsections (1) and (2) do not apply if the recipient has a guardian of the person who has authority to make decisions concerning the personal assistance service, or an attorney for personal care under a power of attorney conferring that authority.

"Parties

"(4) The parties to the application are:

"1. The recipient.

"2. The proposed representative named in the application.

"3. Every person who is described in paragraph 4, 5, 6 or 7 of subsection 18(1), as it applies for the purpose of section 56.

"4. The member of the service provider's staff who is responsible for the personal assistance service.

"5. Any other person whom the board specifies.

"Appointment

"(5) In an appointment under this section, the board may authorize the representative to make a decision on the recipient's behalf,

"(a) concerning the personal assistance service; or

"(b) concerning any personal assistance service, or any of several personal assistance services or kinds of personal assistance services specified by the board, whenever a decision is sought concerning that service or a service of that kind and an evaluator finds that the recipient is incapable with respect to it."

Mrs Caplan: The only discussion point that I would make—and this is for Mr Tilson, who I know—

Mr Michael Brown: Give Mrs Johns a rest.

Mrs Caplan: And to give Mrs Johns a rest. Actually, that's the other reason, to give Mrs Johns a rest and catch her breath for a minute.

The reason that we are reading these amendments, which frankly just change the one word from "personal assistance plan" to "personal assistance service," is because the government—

Mr Michael Brown: And "recipient."

Mrs Caplan: And "recipient," the language of it—is because the government didn't consult. If you had spoken to the organizations, the nursing home association and so forth, they would have told you before you tabled this

legislation what the language should have been. This is just one example, only one—and I'm making the point now to give you a rest—but the truth is all of these copious amendments that are taking tremendous time before this committee to change a simple word could have been avoided if the government simply had consulted with those people who know what the legislation should say and what the changes should have been.

Mr Tilson: I learned my lesson.

Mrs Caplan: I'm glad you learned your lesson.

The Vice-Chair: Any discussion with respect to the motion? All those in favour? Carried.

The second amendment to section 64 is a Liberal amendment.

Mrs Caplan: This one is not because the government didn't consult.

Mr Michael Brown: Probably it is, actually.

Mrs Caplan: This one is actually an amendment that's going to be withdrawn because it was dependent upon something previous that the government didn't accept.

The Vice-Chair: Section 64 as amended? Carried.

Section 65, Ms Johns's government amendment.

Mrs Johns: Page 166.

I move that subsections 65(1) and (2) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Application for directions

"(1) A substitute decision-maker may apply to the board for directions if the incapable recipient expressed a wish with respect to a personal assistance service, but,

"(a) the wish is not clear;

"(b) it is not clear whether the wish is applicable to the circumstances;

"(c) it is not clear whether the wish was expressed while the recipient was capable; or

"(d) it is not clear whether the wish was expressed after the recipient attained 16 years of age.

"Parties

"(2) The parties to the application are:

"1. The substitute decision-maker.

"2. The recipient.

"3. The member of the service provider's staff who is responsible for the personal assistance service.

"4. Any other person whom the board specifies."

The Vice-Chair: Any discussion? All those in favour? Agreed.

One more amendment to section 65, an NDP amendment. Ms Boyd.

Mrs Boyd: That is withdrawn, Mr Chair, because it involves the age of 16.

The Vice-Chair: Section 65 as amended? Carried.

Section 66, government amendment. Ms Johns.

Mrs Johns: Page 168:

I move that subsections 66(1) and (2) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Application to depart from wishes

"(1) If a substitute decision-maker is required by paragraph 1 of subsection 57(1) to refuse consent to a personal assistance service because of a wish expressed by the incapable recipient while capable and after attaining 16 years of age, the substitute decision-maker may apply

to the board for permission to consent to the personal assistance service despite the wish.

"Parties

"(2) The parties to the application are:

"1. The substitute decision-maker.

"2. The recipient.

"3. The member of the service provider's staff who is responsible for the personal assistance service.

"4. Any other person whom the board specifies."

The Vice-Chair: Any discussion? All those in favour? Carried.

The second amendment to section 66 is an NDP amendment. Ms Boyd.

Mrs Boyd: That's withdrawn. Again, it involves 16 years of age.

The Vice-Chair: Section 66 again, Ms Johns's government amendment.

Mrs Johns: Page 170:

I move that subsection 66(3) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "resident" in the fourth line and substituting "recipient."

The Vice-Chair: Any discussion? All in favour? Carried.

Section 66 as amended? Carried.

Section 67, government amendment. Ms Johns.

Mrs Johns: Page 171:

I move that subsections 67(1) and (2) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Application to determine compliance with section 57

"(1) If a decision concerning a personal assistance service is made on an incapable recipient's behalf by his or her substitute decision-maker, and if the member of the service provider's staff who is responsible for the personal assistance service is of the opinion that the substitute decision-maker did not comply with section 57, the member of the service provider's staff who is responsible for the personal assistance service may apply to the board for a determination as to whether the substitute decision-maker complied with section 57.

"Parties

"(2) The parties to the application are:

"1. The member of the service provider's staff who is responsible for the personal assistance service.

"2. The recipient.

"3. The substitute decision-maker.

"4. Any other person whom the board specifies."

The Vice-Chair: Any discussion? All those in favour? Carried.

The second amendment to this section is an NDP amendment. Ms Boyd.

Mrs Boyd: The purpose of this amendment is to allow any person to apply to the board, not just a staff member of the care facility staff or the service provider's staff. I see no point in our going through the same discussion that we've had before, so I withdraw the amendment.

The Vice-Chair: Withdrawn. Again, a government amendment to the same section. Ms Johns.

Mrs Johns: Page 173:

I move that subsections 67(6) and (7) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Deemed not authorized

"(6) If the substitute decision-maker does not comply with the board's directions within the time specified by the board, he or she shall be deemed not to meet the requirements of subsection 18(2), as it applies for the purpose of section 56.

"PGT

"(7) If the substitute decision-maker who is given directions is the public guardian and trustee, he or she is required to comply with the directions, and subsection (6) does not apply to him or her."

1520

The Vice-Chair: Any discussion? All those in favour? Carried.

Section 67 as amended? Carried.

Section 68? Carried.

Section 69, NDP amendment. Ms Boyd.

Mrs Boyd: I move that section 69 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsection:

"Rules of procedure

"(6) The chair may make rules governing the procedure before the board."

The purpose behind this is to make sure that there is consistency in terms of the way the board acts. At the present time there is no way of making that determination. It's quite normal under boards and commissions that the chair be able to make the rules of procedure for a board, and I think it would be appropriate for us to put this in.

I'd quote Judith Wahl from the Advocacy Centre for the Elderly, who said:

"Under the CTA section 36(2), the chair of the board has the power to make rules governing board procedures. The HCCA does not give the chair the same power. There, procedures may vary from one hearing to another resulting in inequities in the system. Also, where difficulties arise regarding procedure, the chair may now decide such matters. Under the HCCA, this will not be possible."

We urge that you understand that there will end up being difficulties if you do not give the chair the authority to do this, common under most boards. Certainly I know that many of the agencies and commissions are given this power and it would be appropriate to ensure there is consistency of application.

Mrs Caplan: We agree.

Mrs Johns: I have been told that this is covered under another act, and I just wanted to have legal counsel explain it to all of us here and then we can decide.

Ms Perun: The reason it was removed from the Consent to Treatment Act and the new Health Care Consent Act is because in the meantime we had amendments done to the Statutory Powers Procedure Act which stipulate that a tribunal may make rules governing the practice and procedure before it; the rules may be of general or particular application; the rules should be consistent with this act and with other acts to which they relate; the tribunal shall make the rules available to the public in English and in French; rules adopted under this section are not regulations as defined in the Regulations Act. We had advice from the chair of the board that it would be redundant to

repeat it in the Health Care Consent Act because these were new powers given to the tribunal under the amendments to the Statutory Powers Procedure Act.

Mrs Caplan: Where was that then?

Ms Perun: That was under the Statutory Powers Procedure Act. It was amended in 1994, I believe.

Mrs Boyd: I'm not clear, and I do remember that we did that, but is this board considered a tribunal for the purposes of that?

Ms Perun: Yes.

Mrs Boyd: Then I withdraw the amendment.

The Vice-Chair: Shall section 69 carry? Carried.

Section 70? Carried.

Section 71, NDP amendment. Ms Boyd.

Mrs Boyd: I move that section 71 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Assignment of board members to deal with applications

"71(1) The chair shall assign the members of the board to sit in panels of three or five members to deal with particular applications.

"Who presides

"(2) The chair shall designate one member of the panel to preside over the hearing to be conducted by the panel in relation to the application.

"Expertise in evaluating capacity

"(3) At least one of the members of a panel that is assigned to deal with a case involving capacity shall be a person with expertise in evaluating capacity.

"Quorum

"(4) A majority of the members of the panel constitutes a quorum.

"Decision of board

"(5) The decision of a majority of the members of the panel is the decision of the board."

We heard many, many deputants come before this committee who, although they understood the reasons expressed by the government in going to a one-person board, did not agree with that decision. Many vulnerable people said very clearly to us that it would be inappropriate for one person to make a determination that might involve literally all the rest of the life of an individual, and it's just as inappropriate to leave that to one person who would of course bring biases and particular views into the situation.

The reason we have very important tribunals, and the name "tribunal," sit as more than one person is to try and ensure that we have a variety of views expressed and that no one person can make a determination that has such an effect on one person's life.

Let me name the groups that recommended the composition of the board remain at three to five members specifically. They were the Niagara Mental Health Survivors' Network; the London Battered Women's Advocacy Centre; PUSH London; Terri Grant-Galli; Alzheimer Association of Ottawa-Carleton; CMHA, Ottawa-Carleton; Council of Aging—Ottawa-Carleton; Patients' Rights Association, Thunder Bay; Ontario AIDS Network; CMHA; David Winninger; Thomas More Lawyers' Guild of Toronto; Justice for Children and Youth.

Although that specific recommendation was not made by many of the other deputants, they expressed concern about the one-member panel, and I'm sure the parliamentary assistant got very tired of saying to people, "But in the interests of expediency, of speed, of making sure that these decisions are made quickly in rural areas and in northern areas, it's necessary for us to have only one member." I think she would admit she failed to convince any of those representatives or vulnerable people themselves that it is ever appropriate for this kind of very important decision to be taken by one person.

One of the deputants said, "I think it is unfair that this go ahead," and Mr Marchese has a whole lot of the quotes available on this particular issue. I urge the government to look at the very serious representations that were made and the possibilities of real injustice here.

I think it has been overstated that it's so difficult to get these panels together. That is not the question. I think it is an attempt to save money and that is not an appropriate kind of saving. A person's entire life, the course of the rest of a person's life may depend upon the decision of this board, and it seems to me most inappropriate that the decision be made by one person.

Mr Marchese: I just want to support my colleague with further statements that have been made by other groups and, again, this is to suggest that we are informed by a whole group of people who have a great deal of experience of this as well and that's why we present this amendment based on what we heard.

On the single member or panel of members:

"The current provisions requiring the board to sit in panels of three or five members should be retained." My colleague mentioned all of those groups and there's no point in repeating them because she covered them all.

Others say the following:

"The board should be required to sit in a panel of three. It is inappropriate for one person who may be prejudiced against a patient due to sexual orientation"—as one example—"to have the sole authority on judging the patient's ability or capacity to make his or her own decisions." That was OAN.

"Clarify the circumstances under which the person will be afforded a panel of three or five as provided under subsection 72(26) of the bill amending the Mental Health Act rather than a panel of one under this section." That was CMHA.

"The board should be required to sit at a minimum as a panel of three and at least one should have expertise in capacity assessment." That was TMLG and Mr Winninger.

"The board should sit in a panel of three with at least one member having expertise in capacity assessment and if a youth is involved then at least one member should have expertise with youth." That was JCY as an organization stating their concerns around that.

"There is concern that a single non-health professional will not be able to fully understand the intricacies and subtleties of capacities," says another person from OGH.

That gives us significant concern as to why it is that one single person would be inappropriate and why it is that we need the safeguards to protect a number of people when they're determining such an important issue of cap-

acity or incapacity, and so on that basis we have moved this motion. I know the government is not moved by it, but we were and we are very concerned, as all these organizations, that one is inappropriate, and three at least should be a requirement.

1530

Mrs Boyd: I'm concerned that some members, some of my colleagues on the other side, might think I was imputing motives to them around the issue of cost of the three-member panel, and I would just remind them what the chair of the board said when he was here. He said directly to the parliamentary assistant, "I wish I didn't have to make this recommendation," that it was a resource-based recommendation.

I don't have Hansard in front of me, but I think those of us who were here heard him say how much he regretted that and that he thought it would have been better for people to be able to sit as more than one. I'm quite happy to be corrected, if Hansard shows I'm wrong, but I certainly recall him saying very clearly that it was a recommendation from him, but it was made because of the budgetary constraints faced by the government.

Mrs Johns: The government cannot support this amendment and I just want to draw your attention to the arguments. I know you've heard them all over the past period. Both Mrs Caplan and myself have been making them. Basically, we believe that we need some flexibility in the system. This is not totally a financial decision. There are a number of different issues and Mrs Caplan has different issues than I do on this.

Coming from rural Ontario, and talking about northern Ontario also, we wait up to seven days for appeal processes to happen. We believe it has to happen on a more timely basis. The person on the one-man board—

Mrs Boyd: One-person.

Mrs Johns: —one-person board, thank you very much—has a number of criteria that are very impressive: a lawyer, member of the bar for at least 10 years, has been on the board for two years, possesses any other qualifications that the chairman of the board decides is important, and on top of that can go out and get any necessary additional information or have anyone else assist that he or she believes needs to be there to be able to make the appropriate decisions. I think we have covered off the issue people are concerned about and the government will be opposing the amendment.

Mr Tilson: I have just a few brief comments to add. These requirements of these individuals who are sitting alone, as specified in the current section 71 that's being proposed, are almost the precise requirements for being a single judge in a court of law. It's as if you're suggesting that single individuals aren't capable of handling these very difficult decisions. The qualifications of these people as spelled out in the legislation, as I repeat, are identical—perhaps not to the letter but almost identical; Mrs Boyd could confirm—to the qualification for being a judge in this province, who are able to hear very difficult decisions as single individuals. I think they'd be greatly offended to hear it's being suggested that they, as individuals, can't make those decisions.

But I think the real issue, and my question is to Mrs Boyd who made the motion, is to confirm the issue that

was raised by Mrs Johns, and that is the issue of this seven-day time frame. Your party, of all parties, experienced the Askov horror stories, and decisions must be reached in a timely fashion, whether in these types of applications or any other judicial types of applications.

The feeling is there that on the proposal you put forward of three or five, there simply isn't the person power to conduct these proceedings. My comment is that, number one, I believe the qualifications of these individuals are very stringent, very high standards as an individual who hears applications alone, and secondly, there's the issue of being able to make these decisions in a timely fashion. We don't believe that with the three or five members in some situations—with the exception of Mr Brown, most of you people on your side are city people. I can tell you that out in the country things don't move as fast as you might think they would.

Mr Marchese: I'll leave the argument of the individual and that person's capacity in relation to a court to my colleague Mrs Boyd. I think she would want to comment on that.

I want to comment on the whole issue of northern Ontario, that you require that flexibility and that is why you would want one person as opposed to three, because in the north you can't get three. If you agreed with us that one person was inadequate, then what you would say was that because of regional concerns—but if you agreed with us that three people were more protection for individuals as opposed to one—we could take care of the issue of the north by saying that under those circumstances, or under some circumstances where it's impossible to get three people, then you could designate one person. You could do that. That's something that could be accommodated, is the point I'm making.

Interjection.

Mr Marchese: Sorry, where are you referring me to?

Mr Tilson: I'm sorry.

Mr Marchese: The essential point is that we think three provides protection and one does not. With respect to the issue of the north, I'm not sure that is the proper example to say: "The reason we'll only have one is because in the north we can't have three. We can't find the resources to do it." I think that's an inappropriate argument to make why it is you should only have one. I think you need the protections there and one is not sufficient.

Mrs Caplan: I spoke to this actually at one point during the hearings and I expressed that there were a couple of reasons why I thought this could be appropriate as a provision in some cases. I wasn't here when we heard from the chair of the board, who is someone I have a great deal of respect for and the job he's done I think is excellent, but I would like to read his words because I was not here and I think they bear repeating. There was a suggestion that he said this apologetically, and I don't believe he did. I read this because I wanted to know whether or not my own thinking was along the lines of the presentation he would ultimately make, and it is.

He stated that there were four reasons and I'm going to put this because I think this is an important issue. We heard about this from a lot of people and I also think there are some misconceptions. I think the most important

aspect of what he had to say was the fact that: "Theoretically, under Bill 19, a maximum of about"—one quarter—"26% of applications...could be heard by a single member. The intention, however, is to apply the provision very" carefully. "It is expected that no more than 5% to 10% of the hearings would involve a single-member quorum at the beginning. Assuming current volume, this would result in savings."

He went on to say that "73% of the board hearings involve involuntary admission" and these "would continue to require three members," and involuntary admissions are the place where you take away individuals' rights and they are admitted to a facility, likely a mental health facility. In that case, what he said is 73% are involuntary admissions to mental health facilities and in those cases they would continue to have the three-member boards. That was the commitment made by the board chair as to how this provision in the act is applied, and since it is in Hansard I expect that would be the result of the application of the law.

The other point he makes is: "Of the balance, many hearings involve applications heard together with reviews of involuntary admission" at the same time. He uses the legal words "on the same docket." "These hearings would also continue with three members. Complex hearings as identified by the parties or the board could be heard by three members."

I think that's important as well because originally I had thought that the discretion and the decision would be left to the chair of the board. My understanding from his presentation before this committee is that if parties request it, they could then have a three-member board. That is an important undertaking from the board chair.

1540

The other thing he mentions, which I think responds to what we've heard from Mr Tilson—I had mentioned it in my comments, having thought about this—one is that he says that, "Only the board's most experienced and qualified lawyer members would be allowed to hear cases on their own," and that this is consistent with the authorities given for single judges as they sit in court cases although—this is a shot, Mr Tilson; you might want to listen. Given your government's experience now with what's happening in the courts that doesn't give me any confidence that you're going to fix that either.

However, that aside, and I didn't mean to provoke you, the other point he makes that I think is worthwhile is that it provides a degree of informality, and in some cases that is appropriate. I mentioned that initially when I was thinking about what this would permit. "The single-member quorum would make the whole process less imposing and allow greater flexibility where appropriate." I think that was an important point because we know that these types of hearings can be very intimidating and where you have a very well experienced member, I think it is reasonable to want to allow the board to have some discretion to make sure that the person isn't intimidated during the finding of a board.

The other point is that all the board's ruling are appealable to the courts. One of the things I found interesting as I've reviewed the workings of this board is that very few of their decisions are actually overturned.

But there is the opportunity for the minister to monitor that through the annual report of the board, and should they see a change in that, then I think there's always the opportunity to influence the decisions the chair is making about the use of the single panel. I think that's appropriate because the board chair is accountable to the Minister of Health who makes that appointment.

The last matter I wanted to raise, Mr Tilson and Mrs Johns, is that I think we do have to be sensitive to the need to respond quickly to areas that are harder to reach, more remote, and that it is often very difficult—I remember this from my own days sitting in the chair of the Minister of Health—to find a full board panel, to be able to organize it, because the board members don't do this on a full-time basis. They have law practices and other things they do with their lives. To be able to put together a board—because by law there's a requirement for what the composition is. To find people who could respond quickly enough—you could usually get one, but we were frustrated by the fact that you had to have a minimum of three at all times. There were, I felt, unnecessary delays in responding when it came to remoteness.

While there is cost saving, and I have no objection to cost saving, the issue here is not is it going to save money or not save money. It is, will people's rights be protected, will they have access to hearings in a timely way, will they be responsive and sensitive, will they continue to have the right to appeal if they are dissatisfied with the hearing, and is the board chair accountable? To all of those I answer yes, and therefore we will be supporting the single board with the hope that the government, through the annual report of the board—and I'm putting this on the record. I would hope that in its annual report the Consent and Capacity Board would identify how many times a single board had been used. That would be helpful. If the government will agree to ask the board to make note of that in its annual report, that might give some comfort to those who have less comfort with supporting this amendment than I have myself.

We will be supporting this, but we would request that the annual report contain the number of times, the percentage, actually, that a single board was used, and also the number of appeals that resulted and the number of court decisions that overturned the board's findings. Those would be interesting data to have contained in an annual report.

Mrs Boyd: First of all, I think Mrs Caplan meant she was not going to support the amendment.

Mrs Caplan: I'm not supporting your amendment. We're supporting the government's amendment.

Mrs Boyd: You mean you're supporting their section of the act.

Mrs Caplan: That's right.

Mrs Boyd: I always get very frustrated around this kind of issue. I'm rather surprised at my Liberal colleague, who has been indignant about things set up by regulation without any basis in the legislation being unacceptable in these very sensitive areas. I have utmost respect for the chair of the board as well, and the member is quite right that he has made an undertaking to us in his report about how often this would happen, but there's

nothing in the legislation to limit him to that. Quite frankly, the financial issue around this is going to limit his ability to maintain that kind of commitment, I'm sure.

Mr Tilson made the mistake of mentioning the Askov decision. Well, we did, we resolved the Askov decision by putting resources into the court system, resources now threatened by your government. The issue here is if you want to get access to the board, give them the resources so they can do it properly.

Mr Tilson: That's your answer, to keep hiring people. That's the problem.

Mrs Boyd: When we are talking about people's lives, it's rather important that we make sure they have a responsibility. If someone's been declared incapable—who, first of all, may have been declared incapable and nobody's bothered to tell them, but somehow they found out so they were able to appeal—and then they find themselves sitting in front of one person, try and imagine what that is like. Try and think about what that means.

Mrs Caplan said the chair of the board said 73% of the board hearings involve involuntary admission. He was talking about mental health facilities, and he said in those cases there would be a three-person board. But we've just gone through section after section where we're talking about what is essentially the involuntary admission to a long-term-care facility, and there's no guarantee. This is going to be a growing group of these situations. What we're saying to the frail elderly is, "We certainly are going to guarantee that those who come under the Mental Health Act will get a three-person board, but you, frail elderly person, are going to have to be satisfied with a one-person board." I think the reasoning here is going to undermine greatly the confidence of vulnerable people in the ability of this act to protect their interests, and I urge the government to reconsider.

Mr Michael Brown: I was interested in the comments, particularly concerning northern and rural Ontario. One of the things that I, and I'm sure all members representing either northern or rural southern constituencies, hope wasn't being suggested is that the level of justice, might be the word, or the level of decision-making will be somehow less to us because the one-person board would hear more of our cases. I didn't take that to mean that. I was just a little concerned, if the hearing needed to take place in Algoma Mills or in Wawa, that somehow we would dispatch one single person because that single person could get there faster than the board of three. That concerned me and I hope that's not what I was hearing. It seems to me that if the case warrants a three-member board, we should have a three-member board, whether that happens in Moosonee or in Gore Bay or in downtown Toronto. I'm not hearing that suggestion, but I just wanted to put that out, that the level of justice has to be the same for us all, and whatever resources it takes, we want those expended because these are important decisions for the people I represent as well as for the people in Toronto. That just has to be said.

1550

Having said that, I am not convinced that a single adjudicator or a single person cannot render a decision, in many cases, as well as three persons. It seems to me the qualifications listed here are quite extensive and that

in many cases a single person can render a level of justice that is the same.

I'm comfortable with what the government is doing, but I think we should caution the chair that we want to have some review of how this works in practice. Perhaps in his annual report he could indicate to the Legislature whether there is a variance of decisions based on how many people are making this decision. If statistically there's a difference in the way decisions appear to be made by three-member boards as opposed to one, then legislators are aware and we can seek redress to this problem, if in fact there is one.

The Chair: The question is—

Mr Tilson: Mr Chair.

The Chair: I'm sorry, I was putting the question.

Mr Tilson: I just want to make a brief comment. I haven't said anything all day.

The Chair: It's the second time you've spoken to this matter, Mr Tilson, I'd just remind you. It's been a long time, I know, but not that long.

Mr Tilson: Mr Chairman, I just wanted to confirm with Mr Brown that certainly that wasn't the intent of my comments. It may well be that there may be situations in a large urban area, for whatever reason, that a one-person board member is what is required. I just wanted to confirm that it certainly wasn't my intention to say that all cases out in the north or the rural areas should be heard by one individual.

The Chair: I think Mr Brown indicated that for us. The question shall pass?

Mr Marchese: A recorded vote, Mr Chair.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Leadston, Parker, Tilson.

The Chair: All those in favour of section 71, as unamended? Carried.

Section 72. Mrs Boyd has an amendment.

Mrs Boyd: I move that subsection 72(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "within the past five years" in the last line.

It is inappropriate, and it is even more inappropriate now that there is the possibility of a one-person panel, for a member of that panel to be either the physician or the lawyer at any time of the person appearing in front of the panel. That is absolutely inappropriate. If indeed we are going to let lawyers with all these wonderful qualifications sit in judgement of people, they ought not to have been the lawyer for that person in the past. That is a clear conflict of interest. I believe the law society would think it is a clear conflict of interest. It is even more serious if we are seriously considering having a physician sitting on a more-than-one-person panel be able to pass judgement on a person to whom he or she has provided medical services in the past, absolutely inappropriate.

Given the delays that people see in terms of complaints in front of the discipline committee of the OMA—or the

law society, as far as that goes—this could well be a person who had laid a complaint against the person who is then sitting in judgement because those decisions often take many years to be rendered. We heard a number of deputants tell us how inappropriate this was, that they did not want anybody who had previously been their physician or their lawyer to sit on these panels, and that the prohibition against a previous relationship is an extraordinarily important issue around conflict of interest.

Mrs Johns: I've been thinking a lot about this because I think it's fairly important. With a one-member board, it would be a lawyer. First of all, it's a very important decision for one person in the first place, and I have substantial problems with the fact that they have acted for the person in the past. With the three-to-five-member board, I don't have the same kind of concerns, because as I think Mr Tilson is telling me right now, a lawyer wouldn't be able to act in that regard because it would be a conflict of interest.

Mrs Boyd: You shouldn't be allowing it, then.

Mrs Johns: I was going to suggest that I wanted to change your motion to take out the "within the past five years" for a one-member board. How would you feel about that?

Mrs Boyd: I don't regard that as a friendly amendment. I think it is just as serious with a three- or five-member panel. It is more serious with the one-member panel, no question about that, and I really think it would be found to be a conflict of interest. That is a very serious issue, and at least that should be addressed, but you may make your own amendment on that. I consider it an unfriendly amendment to my amendment. My amendment is just as serious for a three- or five-member panel, where a physician or a lawyer sitting on that panel may have represented or treated that person in the past.

We heard many deputants saying: "This is not appropriate. This is not fail-safe. These people have a huge amount of decision-making over us. We may have disagreed with them in the past, we may have refused treatment from them in the past or we may have fired them as our lawyer in the past, and that puts us in a very vulnerable position. It is a conflict of interest. It should not be allowed."

Mr Michael Brown: I tend to agree with Mrs Boyd. Would the government give me some justification for why it's only five years? I would just like to hear the reasoning.

Mrs Johns: I'll have legal counsel speak to it. We've been talking about this for a couple of days, and I think Mrs Boyd is making a very powerful argument here. As I said, we came with no preconceived notion about this because I wanted to talk about the one-person board, the three and the five. I believe she's quite correct and that we should go the route she suggests. But I will see if we have a legal reason we put the five years in.

Ms Perun: There's no real legal reason. It was a policy decision that was made basically on the recommendation of the chair of the board, who was concerned about financial reasons predominantly, and that it was very difficult to get together enough people in small communities.

Mr Marchese: That's just the issue, that for reasons of expediency we apply such a rule. We think it's wrong. The basic, fundamental rule is that a hearing must be seen to be impartial. That's it. You don't need to know any more.

Mr Tilson: You're right, Rosario.

The Chair: Mrs Johns, did you have a formal amendment that you'd like to make to this?

Mrs Johns: We'll take theirs. Just a second. Can you take that over to Mrs Boyd?

Mrs Boyd: Legislative counsel has suggested that we withdraw the original and move this.

The Chair: Fine. Read it out to us, please.

Mrs Boyd: I move that subsection 72(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "is the member's patient or client or was the member's patient or client within the past five years" in the third, fourth and fifth lines and substituting "is or was the member's patient or client."

The Chair: Is there any opposition to the removal basically of a time limit and just saying the person is in conflict whether it's during the five years or outside it?

Interjection: No problem.

The Chair: It's good to see the cooperation of the various caucuses. Thank you. That is carried.

1600

Shall section 72, as amended, carry? Carried.

We're moving on to section 73. We have a number of amendments; the first is by Mrs Johns.

Mrs Johns: This is on page 177. I move that subsections 73(3) and (4) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Decision

"(3) The board shall render its decision and provide each party or the party's counsel or agent with a copy of the decision within one day after the day the hearing ends.

"Reasons

"(4) If, within 30 days after the day the hearing ends the board receives a request from any of the parties for reasons for its decision, the board shall, within two business days after the day the request is received, issue written reasons for its decision and provide each party or the party's counsel or agent with a copy of the reasons."

This relates directly to the discussion we had with Mr Bay. We were talking about written reasons. He said he decided that there shouldn't be written reasons totally due to financial reasons. We as a government feel that's not a good enough reason. We suggest that if someone requests the reasons within 30 days, they should be able to obtain them. After that, he said it was difficult to get them, that the transcripts were more difficult to do because of the timing and how many they do. That's why we have suggested this.

The Chair: Is there anyone who would like to speak against the motion? Mrs Boyd?

Mrs Boyd: Are you surprised? We have an amendment to this section as well. It essentially is that the board shall issue written reasons for its decision in all cases and shall provide each party or the party's counsel or agent with a copy of the reasons within two business

days after rendering the decision. We disagree that this should only be done on request. We particularly disagree because of the history of lack of advice and information that people get around this sort of thing under this act. We believe very strongly that if a board can render its decision, it must have reasons for that decision, and those reasons tell the person whether they want to appeal the decision. It is really important for us, particularly given some of the changes the government has made in the law thus far around not waiting for treatment, for example, until somebody goes ahead. This all calls into question the ability of the board to explain itself to the people who are most involved. We believe written reasons are the bare necessity to everyone.

The other part of it is that if there aren't written reasons—and we asked the chair of the board, “Wouldn't those reasons be available?” It was not clear to me whether reasons are suddenly written up when someone asks for them. Aren't they there in the first place, and isn't it much more effective and efficient and fair to present those reasons at the time?

The argument will be made that the Supreme Court often renders a decision without rendering reasons. I'm sure that's the argument Mr Tilson is just whispering in the ear of his colleague. I think that argument is in a whole different regime; it is not in this regime at all. It is like comparing apples and oranges.

I'm glad this is somewhat improved from the existing act as you presented it, and it is somewhat improved. But again it relies on this incapable, vulnerable person to take the action to protect himself or herself. That is the whole issue with this whole bill. This is what vulnerable people told us all over this province, that everything in this act mitigates against their obtaining justice under this regime. This is just another example, like the refusal to give rights advice, like the refusal to inform people of appeal decisions. It's another nail in the coffin of vulnerable people, who simply are being required by you to represent themselves in very vulnerable circumstances. It's just another example of the way in which their rights are being ignored by this government.

Mr Marchese: That's really the point I want to emphasize, that rights do not seem to be as important. Expediency is the issue, saving money is the issue. That's really it. If you don't think that's the issue, your motion is not the appropriate one. As my colleague says, your motion relies on the person to take action. You're assuming that the person has a great deal of sense of mind, once such a decision has been made, that they will request it. You know it won't happen, you know it doesn't, and you're relying on the fact that that indeed will be the case.

The thinking is: “Why should we even bother? If they request it, we'll do it. If they don't, it's not a big deal.” Rights are put aside. It's just their rights, but it's not a big deal. If they're found to be incapable, who really cares? That's the effect of your reasoning. You're not saying that, but that's the effect of your motion.

I just want to remind Mr Tilson again of the list of people that have spoken to this issue.

“Amend to require written reasons in all cases,” and that was Atnikov, COAOC, FAME, OACL. The acro-

nyms are all listed at the back. I would have to go back and find them. That's why I have to read them in for the record as they are written here.

“Written reasons should accompany a notice of right of appeal to the Ontario Court (General Division) in all cases,” says this other organization.

“Impose a mandatory duty on the board to advise patients that they may request written reasons.” This is Mr Winninger.

“Written reasons should be provided in all cases. If persons are unable to understand legal concepts or their first language is not English, an effort should be made to interpret the reasons.” That's the organization called PCLS.

“Section 73(4) should be amended by deleting the words ‘if any of the parties so requests’ in line 2.”

There have been a sufficient number of groups concerned about this. We're concerned about it. We think written reasons should be provided. You should not, because of expediency or because of saving money, do this to facilitate your work. People's rights are much more important, and you should respect that as opposed to simply saying, “If they request it, we'll do it.” You know very well very few will make that request. We think it's wrong.

Mr Garry J. Guzzo (Ottawa-Rideau): I find the argument very compelling and I commend the two members opposite for the position, but it's very frustrating to hear the argument being made, and made so capably, by a former Attorney General, because it's true that in many cases in our province, the same situation takes place. You make a point about the Supreme Court of Canada. Every once in a while, maybe 10% of the cases, maybe one third of motion matters, will be dismissed or dealt with without reasons. Indeed, in our own Court of Appeal, there may be almost as many requiring written reasons, with a very small percentage, 10% or 20%, where reasons are not provided.

But in our provincial court, where 90% of the legal work is transcribed, we seldom see judges giving written reasons. How, for example, could a judge do a list of 100 or 120 cases in a day in a provincial court and provide reasons for each and every dismissal or each and every conviction or, at the time of sentencing on pleas of guilty, in each and every situation? They have to finish a list because there are another 100 cases on the list tomorrow. In the Court of Appeal, there's no such pressure. They don't have to start the next case until they finish the first. If it takes a day, fine; if it takes three weeks, that's fine. And the judges at that level are provided with tremendous assistance, tremendous amounts of money to have the assistance available to do the research.

1610

Who's going to do the research in the situation before us? The individual has to sit down, particularly in any kind of lengthy hearing, and review the documentation, review the evidence. One might think that in a position like that, it's as simple as taking the side that wins and adopting the reasoning of that side. But that's not always the truth. Many times, that person is going to find, as the judge will often find, that neither side is correct. One has to produce the documentation and the basis for the

decision in law, do the research, dig out the matters, provide the written, then have it produced.

It is a question of expediency, but it's a question of expediency that we see in many facets of our systems and in many facets of the law. It's a constant thread in terms of this chamber and in terms of this Legislature where maybe 90% of the work, looking at the court system, the people with the least amount of resources turn to a system for assistance and support, people who possibly need the most protection and the most assistance, and they get the least at the provincial level.

I don't know how you can possibly ask in these proceedings that an individual or a panel is going to produce written reasons, produce them quickly and in every case. They should be made available because it is a very valid point. The fact that it doesn't take place in the provincial courts is not a good argument against doing it here, and I appreciate that, but it is not possible and it is not going to be possible to produce them in a timely fashion. To obligate a panel or an individual in that position to produce within a reasonable period of time if requested I think is a safeguard that would have to be seriously looked at. But to say in each and every set of circumstances? You're asking for a backlog and producing a system which would render the decision-making process totally ineffective.

Mr Michael Brown: I'm going to be quite short. It says in the amendment that within two business days of a request, you will have to produce the reasons. To me, it doesn't make much sense to produce reasons when nobody seems to want them. If there's a request, is people want the reasons, they are going to be there within two business days. If nobody requests it, in other words nobody wants them, I don't see a lot of point in producing them. We will be supporting the government's amendment.

Mrs Boyd: I'm very interested in what Mr Guzzo says. I've spent a lot of time in court, and certainly in my experience in both provincial court and in General Division, when someone is found guilty, they are found guilty on the evidence presented in front of the court, and the judge, in delivering the verdict, will normally say what evidence was accepted and what evidence wasn't accepted. You're quite right: It may take some research to look at the case law that's been cited by the crown and by the defence and see how it applies to the evidence in front of the court. That does take some research time.

I'm not sure that's the case in front of the board, because you wouldn't have a lot of case law in front of the board. What the board is trying to determine is whether someone has capacity or has not got capacity, and there must be some reason they come to that decision. Judges always verbally say they either believed the defendant or they believed the crown. At least that's a reason to do it. When we're talking about incapacity, we're talking about something quite different. While I appreciate what he's saying, I agree with him that a resource issue is there in the provincial courts, just as it is in front of the board, and perhaps justice isn't best delivered when resource allocation is the major reason we do things. I would agree with him on that.

The other thing I would suggest to him is that he would never have had someone in front of his court who had been deemed incapable. The difference in what a judge does in the court, particularly in an instance where someone may be incarcerated, is that that person has to be capable of understanding what's going on or else they aren't tried. Capacity is the issue in those cases.

What we are looking at here are people who are being—that decision is being made: Are they capable or are they not? I think that's a very different situation than what we see in front of our courts; equally serious, at least, and very different.

If in fact within two business days after the day the request is received these reasons can be produced, it means that those reasons exist. How can they be produced within two days? Does that mean they're on transcript? If that's what it means, that within two days these can be produced, surely they can be produced in every case. What is the problem? They're already there. The issue is surely simply printing them out, because in most of these cases the technology would enable us to take the finding of the person and have it done in such a way that, as the tribunal spokesperson, the chair of the tribunal—if it's three or five—the individual, as they made their finding, would have to dictate something. We now have the technology that voice dictation can produce a written copy. Why not use the technology so that is always available?

The OACL made an observation on this issue. They said: "In the OACL's view, the consistency of board decisions will depend upon written reasons being prepared in every case. Such reasons will not ordinarily be voluminous or time-consuming. OACL submits that the requirement to issue written reasons in all cases decided by the Consent and Capacity Board should be preserved in the new legislation." I would argue very strenuously that that is really the only way we can be sure that we have consistency in these things. It is particularly important, if we are going to have one-person boards who are not having their work observed by others, to have that kind of consistency.

Mr Marchese: If I were a member on the other side, I would find my colleague's arguments very compelling and persuasive, but I'm not sure that is the case. That's disappointing, and I suspect the government will vote this down, but I do hope that if they do, they will—

Mrs Boyd: No, it's their own amendment.

Mr Marchese: Not their own, obviously, but ours, as we suspect they will, that they will reconsider even their own position and consider something that we think may be a compromise. The compromise is suggested by Mr Winner, where he says to impose a mandatory duty on the board to advise patients that they may request written reasons. I would think, based on the kinds of arguments he was making, that's something Mr Guzzo can support. If there's a duty on the board to advise patients that they may request written reasons, then once we've told them, some may request them; many may not, but at least you've allowed them the opportunity to do so.

So if you find our position too extreme, for a variety of different reasons, if you then find Mr Winner's suggestion—which we have as a proposal further down the

line—too extreme, then I find that a problem. Why would you not then consider something like that, which in my view is a reasonable compromise? You don't have to have written reasons all the time, although I think Mrs Boyd made a very good case as to why you should. But if you can't buy that, then why not allow the duty of the board to say, "You can have them," and then leave the individual that right? It seems then something that should be a basic right on both sides: One to say, "You can request," and the other one to say, "No, we don't want it," or, "We don't need it," or, "Yes, I would like to have it." If you refuse that compromise, you're wrong again.

1620

Mr Bernard Grandmaître (Ottawa East): I have a question. If we're concerned about the backlog that it would create, can I ask staff or whomever, how many hearings took place, for instance, last year?

Mrs Caplan: We have those statistics.

Mrs Johns: Two hundred and seventy-five? I'm not sure; I think I've got that right.

Mrs Caplan: Nineteen hundred and fifty-seven.

Mr Grandmaître: I've got my answer.

Mrs Johns: Wow, am I off.

Mr Guzzo: And they're regionally dominated.

Mrs Boyd: Must be something in the water.

The Chair: If there are no further questions, I'll put the question. Shall the government amendment pass?

Mrs Boyd: Recorded vote, Mr Chair.

Ayes

Caplan, Doyle, Grandmaître, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

Nays

Boyd, Marchese.

The Chair: We shall now move to page 178. Are you still proposing to make this amendment?

Mrs Boyd: I wish to read it into the record. I do not think we need to have the discussion, but I do wish to read it into the record.

I move that subsections 73(4) and (5) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Reasons

"(4) The board shall issue written reasons for its decision and shall provide each party or the party's counsel or agent with a copy of the reasons within two business days after rendering the decision.

"Method of sending decision and reasons

"(5) Despite subsection 18(1) of the Statutory Powers Procedure Act, the board shall send the copy of the decision and the copy of the reasons,

"(a) by electronic transmission;

"(b) by telephone transmission of a facsimile; or

"(c) by some other method that allows proof of receipt, in accordance with the tribunal's rules made under section 25.1 of the Statutory Powers Procedure Act."

I see no reason why we would go through the same discussion on this, but I did want to make it clear that we wanted to make that amendment.

The Chair: I thank you for your accommodation in that regard. You've withdrawn it then.

Mrs Caplan: On a point of order, Mr Chairman: That amendment is out of order because it is contrary and you have to rule it's out of order. She can read it in the record but it can't stand. You have to rule it out of order.

The Chair: I'll so rule then, at the request of Mrs Caplan.

Mrs Caplan: It's out of order.

The Chair: The alternative? What is the position in that regard?

Mrs Boyd: That will be a motion, Mr Chair.

I move that section 73 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsection:

"Notice of right to request reasons

"(4.1) The board shall advise all parties to the application that each party has a right to request reasons for the board's decision."

Agreed?

Interjections: Agreed.

Mrs Boyd: Good.

Mr Marchese: Well, the government isn't all that bad all of the time.

The Chair: Subsection 73(4.1) has passed; unanimous consent.

Subsection 73(5) is a government motion.

Mrs Johns: On page 180.

I move that subsection 73(5) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "and the copy of the reasons, if they have been requested" in the third and fourth lines and substituting "and, if reasons are required to be issued under subsection (4), the copy of the reasons".

This is a consequential amendment to the 30 days that we just approved.

The Chair: Carried? Carried.

I now put the question of section 73, as amended. All those in favour? Carried.

We are now proceeding to section 74.

Mrs Johns: Page 181.

I move that subsection 74(2) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "plan" in the third line and substituting "service".

The Chair: Agreed? Carried.

Subsection 74(2).

Mrs Caplan: I move that subsection 74(2) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "at their own expense" in the fifth line.

In speaking to this, this is a new provision. At the present time, if anybody wants to get access to information or request that, they can ask for a photocopy. They shouldn't have to pay for that. I think that it adds not only an unwarranted user fee, but an administrative collection expense and all of that nonsense that I just think is wrong to include in this bill at this time. People should be able to get the information without having to pay for it.

By the way, that is the rule today. I did have some discussions with legislative counsel and I know that there have been some counsels for individuals who have requested pages and pages and unreasonable numbers of filings as opposed to being more specific. I wouldn't

have any concern if they wanted to prescribe by regulation some guidelines around that, but to just permit absolutely individuals to have to pay for access to their own records in all cases, I just think that it's unreasonable. It is a user fee and this government promised no new user fees, but in fact we've seen user fees all over the place. This is one place where I hope that they will take it out, I really do.

Mrs Johns: The government's opposed.

Mr Marchese: That's it?

Mrs Johns: You want an explanation? In government motion 198a we're going to put forward an amendment and we're going to be talking about charges at that particular point, because the usual practice for counsel is that they simply call and say, "I want the whole document," as Mrs Caplan has talked about previously.

Mrs Caplan: To be fair, I think that there is some middle ground between making people pay and what has been, on occasion, an excessive practice by some acting on behalf of individuals—counsels and so forth, attorneys—requesting whole files. I don't see why you couldn't look at some guidelines to stop the excessiveness but still not penalize the individual who may need a dozen pages photocopied out of their file. I just think it's unreasonable to take an all-or-nothing approach.

The Chair: Is there any further comment before I put the question? If not, shall the amendment pass?

Mr Marchese: Recorded vote.

Ayes

Boyd, Caplan, Grandmaître, Marchese.

Nays

Doyle, Johns, Ron Johnson, Klees, Leadston, Tilson.

The Chair: The motion is defeated.

Shall section 74, as amended, pass? Carried.

Shall sections 75, 76 and 77 pass? Carried.

We're now proceeding to section 78.

Mrs Caplan: I move that section 78 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsection:

"Additional time for filing notice of appeal

"(2.1) Despite subsection (2), if a party to a proceeding before the board requests written reasons under subsection 73(4) within seven days after receiving the board's decision, the appellant may serve his or her notice of appeal on the other parties and file it with the court, with proof of service, within seven days after he or she receives the board's written reasons."

The intention of this is to stop the appeal clock running. As we mentioned earlier, after the board has made a decision, you can appeal to the courts. We have said that written reasons are not required in all cases, but where there is written reason requested, it is frequently for the purpose of an appeal. While we do have a time limit within which the written reasons should be given, it seems unfair that the appeal clock of seven days continues on even before the person has the written reasons that they would need in order to file the application. What this does is say that the appeal clock starts when they receive written notice.

1630

Mrs Johns: We're opposed to this motion because it would extend the appeal period, it would cause delays and I understand from the people who practise in this area that the notice of appeal can be filed very, very quickly with the following wording:

"We appeal on the grounds that the board erred in fact or law and on such other grounds as the honourable court permits upon receipt of records or transcripts."

So you actually don't have to have the documentation there. That's not the only reason that they may be requesting the written document, so they could file an appeal immediately with that kind of wording and then wait for the documentation.

Mrs Caplan: The whole appeal period is seven days. That's all there is: one week from the time of the hearing date for an appeal period. All we're saying is that the appeal period should start when you receive written notice. It's not a big deal, it's not a huge delay, you're not talking about emergency situations.

Mrs Boyd: Especially when they're saying two days.

Mrs Caplan: Especially since you've already said two days. So all this would do, maximum, is, in the worst-case scenario, the appeal period of one week would start two days later, which is when they will receive their notice. It's a reasonable amendment. It's unreasonable, because effectively what you do is shorten the time limit to five days, and that, I think, is unreasonable.

Mrs Boyd: I think in the absence of this kind of thing, what we will see is a lot of people filing appeals without having the written reasons when if they'd had the written reasons, they wouldn't have filed the appeal. I think you really need to be very clear. People are asking for the written reasons so that they can make a determination as to whether or not they have any reasonable expectation of success in the court. It really is to facilitate. If you're guaranteeing it within two days, you're really not talking about huge delays. If you really are going to get them out in two days, then you shouldn't have a problem with this.

Mrs Caplan: Just to clarify what I said, it's not that you need the written reasons in order to appeal, but the written reasons will tell you whether you have any grounds to appeal. So you're going to get all kinds of appeals go forward when, if you'd simply waited for the written reasons, people may not appeal. That's the intention here. I just want to be very clear that what this is proposing to do is to start the appeal clock from the point at which the written reasons are received. We think that that may then mean that you have fewer appeals and your courts would be less clogged, Mr Tilson.

The Chair: Shall the amendment pass?

Mr Marchese: On a recorded vote.

Ayes

Boyd, Caplan, Grandmaître, Marchese.

Nays

Doyle, Johns, Ron Johnson, Klees, Leadston, Tilson.

The Chair: The amendment is defeated.

Shall section 78 pass? Carried.

Section 79 of schedule A, Mrs Johns.

Mrs Johns: On page 182, I move that subsection 79(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "plan" in the third line and substituting "service."

The Chair: Agreed? Any objections? Carried.

Mrs Caplan: I move that section 79 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsection:

"Child admitted to psychiatric facility

"(4) If a person who has been admitted to a psychiatric facility under section 22 and who is less than 16 years old is a party to a proceeding before the board, the children's lawyer shall provide legal representation for the person unless the children's lawyer is satisfied that another person will provide legal representation for the person."

This ensures that if a child is committed involuntarily under the Mental Health Act they will have legal representation. It's a protection for the child. There's nothing in the act now to ensure the child has legal representation. The children's lawyer is actually an office.

Mrs Johns: Legal counsel wants to speak to this.

Ms Perun: As I understand it from the chair of the board, the current section 34 of the Consent to Treatment Act is the same. The new Health Care Consent Act repeats section 34 of the Consent to Treatment Act in section 79. The current act and the current practice of the board is to—the wording is, if a person who is or may be incapable with respect to a treatment is a party to a proceeding before the board, the board has in fact the jurisdiction to turn to the children's lawyer to assist in finding a lawyer for the child. So that's the current practice under the current provisions of section 34.

We're not changing anything in section 79. So I just wanted some clarification about exactly whether it's the involuntary committal that you're concerned about under the Mental Health Act, whether that's the issue. Because if it's informal admission to which the Health Care Consent Act applies, section 79 would in fact apply already and section 79 provides that the board may direct the public guardian and trustee or the children's lawyer to arrange for legal representation to be provided for the person.

Mrs Caplan: I thought it was clearer if we specified that for children it should be the children's lawyer, and that it was not discretionary; that in other words, when you're dealing with an involuntary committal of a child, a person under the age of 16, it's not a question that the board "may," it's this is the procedure that they will undertake, and that protects the child in that circumstance and it just clarifies it. It just gave me comfort.

Mr Tilson: Isn't subsection (3) quite specific, though?

Mrs Caplan: I don't think so.

The Chair: We seem to have a different legal opinion here. Mrs Caplan, are you completed?

Mr Grandmaitre: Too many lawyers.

The Chair: It seems there are.

Mrs Caplan: Because there's the option of either the public guardian and trustee or the children's lawyer, I think if you're dealing with a child it should be the children's lawyer that's called upon to ensure that they have legal representation.

Ms Perun: It is, though. The public guardian and trustee deals with people over 16 and the children's lawyer deals with people under 16, and I understand—

Mrs Caplan: And there's no discretion for the board? Then I read it wrong.

Ms Perun: Basically 79(1) says "the board may direct the public guardian and trustee or the children's lawyer to arrange for legal representation."

Mrs Caplan: You see, I'm concerned with the word "may." It's discretionary and if you want to ensure that children have the representation of a lawyer, either you put this amendment in or you amend it to say "shall." I want to make sure there's no question that it's discretionary and that it's more than procedure.

Mrs Boyd: This section is not included. The amendment that you've got to the Mental Health Act specifically says, does it not, that this section isn't included?

Ms Perun: All the other applications to the board do not—where we've referred to specifically, like sections 72 to 78 apply, section 79 doesn't apply. It doesn't say that 79 applies but the reading of the entire act says that in any proceeding before the board, where the person is incapable, this section would in fact apply. That is one interpretation of section 79. Now, to make that clearer, we can address it, but deal with it under the Mental Health Act where the two applications come up.

Mrs Caplan: I don't have any problem if you deal with it under the Mental Health Act. It was the vagueness and the fact that it wasn't clear that this applied. So if you'll give an undertaking, I'll withdraw this.

The Chair: She has no authority to give an undertaking in that regard.

Mrs Caplan: No; the parliamentary assistant does. That's what she's here for, is to give an undertaking to do it there.

The Chair: You were speaking to Halyna.

Mrs Johns: I'll give an undertaking that we'll make it clear under the Mental Health Act.

Mrs Caplan: That's great. Thank you.

The Chair: Are you withdrawing the motion?

Mrs Caplan: Yes.

The Chair: Shall section 79 pass, as amended? Carried.

New section 79.1, Mrs Caplan.

1640

Mrs Caplan: On this one, Chair, I'm going to read it in and then, for the purpose of voting, it could be split into parts because one does not necessarily rely upon the other.

I move that schedule A of the bill be amended by adding the following section:

"Additional duties of the board

"79.1(1) The board shall inform and educate the public with regard to issues related to the various matters that can be the subject of an application to the board and how these matters are determined.

"Advisory committees

"(2) The board shall establish the following three advisory committees to advise it on issues related to the various matters that can be the subject of an application to the board and how these matters are determined and on the education of the public with regard to these issues:

"1. A committee composed of health practitioners under part II and representatives of care facilities under parts III and IV.

"2. A committee composed of persons who are or have been the subject of an application to the board.

"3. Persons who are related to persons who have been found to be incapable by the board.

"Same

"(3) The advisory committees established under subsection (2) shall meet jointly at least two times per year to develop recommendations for the board and the Minister of Health with regard to issues related to the various matters that can be the subject of an application to the board.

"Same

"(4) The advisory committee shall report to the board with recommendations from time to time and shall submit any recommendations from their joint meetings to the board and to the Minister of Health."

In speaking to this, 79.1(1) stands on its own and it is a mandate to participate in the education of the public. If there has been one thing consistent over the last many years, it has been the recommendation from coroners' inquests that there be education as to how the act applies and how the board, in particular, provides education for providers, professionals, families and individuals alike. The board does do that now and they participate in an informal way to share that information.

One of the things that we heard from the chair of the board and that we have heard from so many of the representations and deputations before the committee was the need for information to be shared and, frankly, it's not something that the ministry itself can do or does very well and that mandate has to be given to the body which has all of the experience in this matter. It shouldn't be informal. It should be a legislative mandate because then if it's legislated, it forms part of the annual report as to what they're doing about it, and I think that's very important.

The advisory committee component is, I think, an important idea. It doesn't cost anything. These people are very happy to come together to give advice to the government. This is the Australian model that I have referred to on a number of occasions where, under the auspices of—they call it their tribunal but it is effectively the same as our Consent and Capacity Board. Because these issues are contentious and they are contentious because of the different perspectives that are brought and we've heard that here. There's a different perspective from the professionals who provide the treatment, there's a different perspective from families and there's a different perspective, frequently, from individuals. One of the places where the Advocacy Commission itself ran into difficulty was in trying to listen to everyone and there was the infighting that, I think, ultimately led to its ineffectiveness and ultimate repeal.

One of the ways that we can encourage the kind of consultation, discussion, dialogue on an ongoing basis is to encourage these groups, that are distinct in an advisory capacity, to feel they have a voice, that they can share information individually and then collectively come together to make recommendations to the government on

how things can be improved. So, it's an internal monitoring device. As I said, it's something that I think would be welcomed by the community that, frankly, has been feeling left out and shut out. That's the advocate community, those who have experience and have no voice, formally, within the workings of this system, if you want to use the word loosely: families that are frequently frustrated because they have no voice and no place where they can get information or feel that they can participate to let anybody know what their own frustrations are, and similarly, providers who have expertise from the dealings and workings of the legislation.

I hope that the government will accept this amendment. The reason that I'd like it split is that the first part, which is the mandate for education, is not at all contentious. The second part on the establishment of advisory committees, I think the government may want to talk about that a little bit more and how it can be done. The other thing is, while it doesn't require a statutory requirement in order to do it—the minister could just decide to do it under the Mental Health Act or under the Ministry of Health Act and set it up, if we get a commitment that he was going to do that—the reason I posed this amendment and put the notion of the advisory committees in the statute is that we would then have an opportunity to discuss the concept, in the hope that the minister and the government would see it as something of value and implement it. I'm not hopeful that the advisory committees are going to be accepted but I am hopeful that the education mandate, which we have heard from everyone is so very important to be included in the statute, will be accepted.

While I'd hope the whole thing would be acceptable to the government I am realistic, and given the fact that so few of the ideas and suggestions have been accepted by the government, it is my hope that at least the education mandate will be in the statute and that the minister will agree to establish the advisory committees under the auspices of the Ministry of Health Act if he will not include it in the statute.

That's really all I have to say, Mr Chairman.

The Chair: Mrs Johns, can the government support this proposed amendment?

Mrs Johns: The government is opposed to the amendment.

Mrs Caplan: The whole thing?

The Chair: Is there anything else?

Mrs Caplan: Could I ask a question of the parliamentary assistant?

The Chair: A political question or a clarification question?

Mrs Caplan: I think it's a question of why they are objecting to including an education mandate.

The Chair: We discussed this before, Mrs Caplan.

Mrs Caplan: I can ask the question.

The Chair: No, no, but I mean—

Mrs Caplan: She is there answering. She's the political representative of the minister. That is a legitimate question, why they made the decision to not support an education mandate.

The Chair: If she intends to answer it. It will be up to her.

Mrs Johns: Why we're rejecting the first part is that the board can educate. It doesn't need this mandate, as you suggested, to be able to educate. We believe it's overly bureaucratic, both sections 1 and 2 of this. I also had them search the Australian model to find out some information about it and we couldn't find any pros or cons to the Australian model. So from that standpoint, having just assessed this, looked at it, I believe it's overly bureaucratic.

Mrs Caplan: Before I yield the floor I'd like to just read again the one part, the education mandate, and ask what's bureaucratic about it: "The board shall inform and educate the public with regard to issues related to the various matters that can be the subject of an application to the board and how these matters are determined."

Mrs Johns: The board can educate and doesn't need to have any special powers to be able to educate. They do some education now.

Mrs Caplan: It's not a question of powers, it's a question of mandate. I would say to the parliamentary assistant and to the minister that no one at this time has a mandate. One of the things we have heard from every inquest over the last decade has been that someone must have an education mandate and that the most appropriate place for that—this comes from the inquests—was the Psychiatric Review Board, now it is the Consent and Capacity Board—it was the Consent and Capacity Review Board. Every coroner's inquest said, "Give the board a mandate to share its information and to educate." There's nothing bureaucratic about that simple statement that gives them a mandate. I'm terribly frustrated about this.

1650

Mr Michael Brown: I'm compelled to wade into this discussion on the side of my colleague Mrs Caplan. We heard at this committee the chair of the Consent and Capacity Board tell us that it was necessary for education and tell us that they were prepared to do it in a broader sense than they had been doing it. I think what Mrs Caplan's saying and what we're saying as Liberals is that the mandate is important here. You may say, "Yes, sure, they could do it anyway or we could do that." The difference is that that's something that can be changed by, "Well, the Treasurer or the Minister of Finance didn't send us down enough dollars this year," or a new government can change its view.

What we're saying is that the Legislature of Ontario, the Parliament of Ontario believes this is important: "This should be done, Minister. This isn't at your discretion to decide. It isn't at the discretion of the Chair to decide. It is something the Legislature and the people of Ontario believe has to happen. There is no option." That is something that is quite different, in effect.

I am having some difficulty understanding what objection the government could conceivably have to providing them with this mandate so we could assure the constituents I represent, whom we all represent around here, that this is going to happen. It is a part of the legislative function that we direct the executive to do some things. That's all we're asking here. It doesn't seem to be an unreasonable request.

The Chair: Thank you, Mr Brown. Is there any other comment before I put the question?

All those in favour of the motion?

Mrs Caplan: The first part of the motion, please. I asked that it be split.

The Chair: I'm sorry, that would take unanimous consent.

Mrs Caplan: Is there unanimous consent to let it be split?

The Chair: No.

Mrs Caplan: Why not?

Mrs Boyd: Could we have a recorded vote, Mr Chair?

The Chair: There was not unanimous consent. We have a recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Ron Johnson, Klees, Leadston, Parker, Tilson.

Clerk of the Committee (Ms Donna Bryce): That's defeated.

Mrs Caplan: I'd like to move another motion.

The Chair: We have Mrs Boyd's motion next.

Mrs Caplan: Actually, as I file it with the clerk and it would go in order, it's identical to the first one but it is just the top, part one, so we can vote on that separately, which is the pure education mandate.

The Chair: I'll need to get an opinion from legislative counsel. It seems that's all right.

Mrs Caplan: I'll go ahead and read it, thank you.

I move that schedule A to the bill be amended by adding the following section:

"Additional duties of the board

"79.1(1) The board shall inform and educate the public with regard to issues related to the various matters that can be the subject of an application to the board and how those matters are determined."

This is the pure education mandate. It's not encumbered by requirement for committees that the parliamentary assistant and the minister believe are bureaucratic. All this says is that the Consent and Capacity Board has a mandate. It doesn't require the government to give them any money to do it. The allocation of resources is entirely within the government's mandate, and determination as to how much they're going to give them, so this doesn't have to cost anything. All it says is that they have a responsibility. Somebody will have a responsibility, a mandate to give information and share with the public their experience with this legislation and educate. It's what we heard from everybody. It costs you nothing.

I have to tell you, Mr Chairman, I'm surprised that you would have any difficulty with supporting a simple and pure mandate that every coroner's inquest in this province has said: "Give an education mandate. Education is important and critical." Presentations that came before this committee, one after another after another said the problem is that there's no education. Mr Marchese, you can read out the record.

The Chair: I'm sure he will.

Mrs Caplan: I don't understand why you would have an objection to the board having a formal mandate to educate, to share its information. It costs you nothing to do this.

Mr Grandmaître: Just say yes.

Mr Marchese: I just want to support Mrs Caplan. It is true that many of the people who came in front of this committee said, "Please don't do this without providing some education to the public." Many of us agreed with that and said that we, as governments, all make mistakes. We've done it, I'm sure that the Liberal government's done it before and you're about to do it as well. So the point of it is, if you spend some time to educate the public with respect to a number of issues, you are in the end saving money and you're saving yourself as well. You look good as a government because you've given them information that they need, that they want.

Mr Tilson, you can make the same mistakes we did, that's all right, and we continue over and over again. You have people coming in front of our committee saying: "Please educate us on this. The public needs this. Nurses need this. Doctors need this. Patients need this. Consumers need this." That's okay, you can refuse them as well, and we go around in cycles committing the same errors. If you want to do the same thing, Mr Tilson and Mrs Johns, you continue to do that, but we think you're wrong. This is a reasonable suggestion that Mrs Caplan is putting forward, and we'll be supporting it.

Mr Klees: Perhaps I've missed something in the course of discussions and I apologize if I have. What is the implication here if this amendment is approved that you're objecting to?

Mrs Johns: What happens at this time is that the board is able to make these decisions. It has the power to do this, as it stands right now. We don't need to put this into legislation.

Mrs Boyd: It's not required to.

Mrs Caplan: It's not part of its duties.

Mrs Johns: It has the ability to do it, though.

Interjection: Then let them do it. They're not going to do it.

Mr Tilson: They are doing it right now.

Mrs Johns: They are doing it.

The Chair: Excuse me. Mr Klees has the floor.

Mr Klees: Just for clarification, what I'm hearing is that the board is doing this now. The rationale of the government is that the board is doing this as a matter of course now, so there's no reason for it to be legislated. Is that correct?

Mrs Johns: Correct.

Mr Klees: Thank you very much.

Mrs Boyd: They are doing it now but they also came in front of us talking about how their mandate under this bill has increased dramatically and their resources have not. The issue is, if they're not required to do this as part of their mandate, it will fall to the budget axe, like so many other things, and we all know that's true. Let's not play around.

When something is not in an agency's mandate—you're the government that is talking about core services all the time, and we all the policy reports that urge you to define "core" as mandated services only. You may be naïve, but we're not. They may do it now, but as their resources get tighter and tighter and with their mandate in terms of the 22 sections they now have to do things, they will not be doing it in the future unless you increase their resources. They know it, we know it and the vulnerable public out there knows it.

The Chair: It's 5 o'clock. We either can have a vote or we adjourn, whichever you prefer.

Mr Marchese: Let's vote.

The Chair: We might as well get it out of the way.

Mr Marchese: Recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Ron Johnson, Klees, Leadston, Parker, Tilson.

The Chair: That's defeated. Thank you. We're adjourned till 10 o'clock tomorrow morning.

The committee adjourned at 1659.

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 - Ramsay, David (Timiskaming L)
 - *Tilson, David (Dufferin-Peel PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Brown, Michael A. (Algoma-Manitoulin L) for Mr Chiarelli
Caplan, Elinor (Orillia L) for Mr Conway
Grandmaître, Bernard (Ottawa East / -Est L) for Mr Ramsay
Johns, Helen (Huron PC) for Mr Hudak
Marchese, Rosario (Fort York ND) for Mr Hampton

Also taking part / Autres participants et participantes:

Ministry of Health
Auksi, Jutta, senior consultant, legislative policy unit
Burwash, Anna, senior policy adviser, program design
Perun, Halyna, legal counsel

Clerk / Greffière: Bryce, Donna

Staff / Personnel: Gottheil, Joanne, legislative counsel

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Thursday 29 February 1996

Journal des débats (Hansard)

Jeudi 29 février 1996

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Advocacy, Consent
and Substitute Decisions
Statute Law Amendment Act, 1995

Loi de 1995 modifiant des lois
en ce qui concerne l'intervention,
le consentement et la prise
de décisions au nom d'autrui

Chair: Gerry Martiniuk
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Thursday 29 February 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Jeudi 29 février 1996

*The committee met at 1003 in room 151.*ADVOCACY, CONSENT
AND SUBSTITUTE DECISIONS
STATUTE LAW AMENDMENT ACT, 1995
LOI DE 1995 MODIFIANT DES LOIS
EN CE QUI CONCERNE L'INTERVENTION,
LE CONSENTEMENT ET LA PRISE
DE DÉCISIONS AU NOM D'AUTRUI

Consideration of Bill 19, An Act to repeal the Advocacy Act, 1992, revise the Consent to Treatment Act, 1992, amend the Substitute Decisions Act, 1992 and amend other Acts in respect of related matters / Projet de loi 19, Loi abrogeant la Loi de 1992 sur l'intervention, révisant la Loi de 1992 sur le consentement au traitement, modifiant la Loi de 1992 sur la prise de décisions au nom d'autrui et modifiant d'autres lois en ce qui concerne des questions connexes.

The Chair (Mr Gerry Martiniuk): Good morning, members of the committee and ladies and gentlemen. This is a continuation of the hearings of the standing committee on administration of justice on consideration of Bill 19, An Act to repeal the Advocacy Act, 1992, revise the Consent to Treatment Act, 1992, amend the Substitute Decisions Act, 1992 and amend other Acts in respect of related matters. Fortunately, the calendar has arranged it that we have one extra day this year and one extra day to complete, hopefully, our deliberations. We can proceed. I believe Mrs Caplan wishes to make a statement for the purposes of the record.

Mrs Elinor Caplan (Oriole): I would like to request that the Ministry of Community and Social Services table for the purpose of this committee the report on unregulated residential homes. It was requested by the committee at the same time as we requested the Lightman report. We've received the Lightman report, but I've been informed that the deputy minister has said they will not release the—I think it was Ernst and Young, although I'm not sure. Do you remember, Marion, the name of the consulting company?

Mrs Marion Boyd (London Centre): Sorry, I don't, but I don't think it was Ernst and Young. It was the other one, Peat Marwick.

Mrs Caplan: I had the note here from research, who said that our request had gone to the deputy minister and that the report that had been done was not being released by the deputy minister. I think the minister has the authority to give us that report. It's one that was commissioned by the previous government.

It would be very helpful for us to have that on this last day, and I'm hoping that through the good offices of the

parliamentary assistant we could have it before noon. It is available under freedom of information. It's in the office, and I'd appreciate it if you'd just phone over and see if we could have that report today by noon.

The Chair: We do not have a representative of that particular ministry, but does anybody—

Mrs Caplan: Mr Tilson has carriage of the legislation.

Mr David Tilson (Dufferin-Peel): Mr Chairman, I'd be prepared to speak to it. Quite frankly, if the deputy minister doesn't want to release it and has some reason for that, obviously, as a member of the government, I'm not going to jump in and say, sure, I'll get it for you in five minutes.

Mrs Caplan: No. I'm asking if you'd make the request and find out what the problem is.

Mr Tilson: On the other hand, I don't mind making inquiries or having our staff make inquiries. There may be some logical reason at this particular moment in time why it's not available. But what I will undertake to do is to at least look at it.

Mrs Caplan: I appreciate that. That would be helpful. If you could let us know by noon what they say about it. I just point out to you that it is available under the freedom of information legislation. We shouldn't have to go to this extent to get it.

Mr Tilson: That may be, Mrs Caplan. We'll look at it.

Mrs Caplan: It would be facilitative if you could just tell them that we'd appreciate having it before the end of the deliberations of this committee.

The Chair: Mr Tilson, thank you for your assistance.

We are now proceeding to section 79.1, and Mrs Boyd has a proposed amendment which I believe is contained on page 185 of the motions.

Mrs Boyd: Actually, I need to ask a question of counsel. May I do that before I move this motion? This motion was in response to one of the briefs we heard where concern was expressed as to whether a minor child who was under another act—and I think the real concern was the Child and Family Services Act—would be able to apply to the Consent and Capacity Board despite any of the provisions of such other acts. I don't want to make a motion to that effect if that already is the case, so I wondered if counsel could advise us.

Ms Halyna Perun: Yes, I will be able to. Under the Health Care Consent Act, other than for incapable people who have guardians or a Ulysses contract, which waives a right of review, any person of any age who has been found incapable of an issue under that act has a right of review. There's no reason why that person would not have a right of review under the Health Care Consent Act. There's nothing in the Child and Family Services Act that precludes a child from applying to the board.

There is a case currently before the Ontario Court of Appeal, and one of the issues on appeal is that the chair of the board, in an application for a review of a finding of incapacity of a child who was 13, decided that he didn't want to hear the issues because the child had gone through the proceedings under the Child and Family Services Act and the issue of capacity was reviewed by a provincial court judge.

Those two decisions, from the provincial court judge and from the board, are now before the Court of Appeal. The government is a party in that appeal, and we hope to get some further guidelines around the juxtaposition of the two acts. But there's nothing in either of these acts that would preclude the child from actually making an application.

Mrs Boyd: My understanding was that in that case it was a sequencing problem, that in fact the referral had been made to the court, the matter had been sent to the court before any application was made, and it was that that caused the chair to make that decision.

Ms Perun: That's right. In his opinion, it would have been an abuse of process to have the issue of capacity reviewed once again in the venue before the board.

Mrs Boyd: So a judge will rule on that and that will give us some clarity, even with these circumstances if an application were made first before proceedings.

I guess the real issue is that if a children's aid society is making application for wardship, which I understand it was in this case, they proceed along their line and it's very difficult often to ensure that all the rights of the child in the case are considered. But they're entitled to counsel, and if counsel isn't available, they're entitled to counsel through the children's lawyer. So really all it requires is a bit of a notice to the children's lawyer that they need to be watching for this kind of a situation.

Ms Perun: That's right.

Mrs Boyd: Thank you. Then I'm not going to make that. I'm going to withdraw this.

1010

The Chair: Thank you, Mrs Boyd. If we can proceed then to a new section, a proposed 79.2, which is located on page 186 of the proposed motions.

Mrs Boyd: I move that part VI of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"Offence: treatment without consent

"79.2 A health practitioner who contravenes section 9 or 16 is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000."

There is an offence portion in the Substitute Decisions Act that applies to substitute decision-makers, and it strikes me that, since the government has saved health practitioners from liability so civil action is not possible against a person if they have acted according to the act, they're not liable. But we believe very strongly that in addition to that—and of course they would have to be found not to be acting in accordance with the act in order for their liability to come into force.

What we're saying is, it is an offence against all of us. It is an offence against the bill itself and all the citizens covered by the bill if a health care practitioner does not get proper consent, just as it is an offence against all of

us and the offence section is there in the Substitute Decisions Act if a substitute decision-maker does not follow the law. It seems to me it is quite appropriate for substitute decision-makers and for health care practitioners to be subject to exactly the same kind of fine if they are not in compliance with the law.

Mrs Helen Johns (Huron): The government is opposed to this motion for a number of reasons. If the health practitioner does not obtain consent, the recourse that the person has is that they can go to the Criminal Code and the provisions may well apply there. If a person obtains improper consent, then the recourse is that there is negligence. So we believe there are proper provisions, if you will, for health practitioners who treat without consent and we therefore are opposed to this.

Mrs Boyd: I'd like to read from the Hansard of this committee on February 12, 1996. The deputant who was before us was a Mrs Jocelyn Huculak. Let me quote from her testimony:

"The last section I'd like to address is one that I've entitled 'Offence Provisions for Health Practitioners.' When I've talked with friends of mine who are health practitioners, this usually gets them excited.

"Much of what we see in the existing legislation and also in the proposed legislation seems to be addressed to the substitute decision-maker. We tell the substitute decision-maker that if you don't make decisions in keeping with the wishes that may have been set out or if you don't make decisions that are in keeping with the statutorily prescribed principles, there are going to be penalties for you. We don't just leave the penalties as they may exist at the common law or the civil law, but it's been taken one step further with this legislation and the penalties have actually been included in the legislation. For example, if a substitute decision-maker makes a decision regarding treatment that goes against the wishes that are known to that person, that person may subject themselves to a fairly stiff monetary fine in the event they are convicted of that breach.

"While we've gone a long way I think to strengthen or to give weight to the fact that wishes and instructions must be followed by substitute decision-makers, I'm not sure we've done the same with respect to health practitioners. An example of that would be wishes or a living will or an advanced health care directive that an individual may have made.

"We've made it very clear to the substitute decision-maker, 'Follow what's set out or there is a penalty prescribed by the legislation that will be applicable.' We haven't said the same, though, to the health practitioner. Certainly, if a health practitioner was to go against known wishes, it doesn't mean there aren't civil remedies that would be available, but I think we would strengthen or perhaps bring home the importance of the individual's wishes to health practitioners if similar offence provisions were provided in this legislation directed at them.

"Naturally, as I've said, there are civil remedies. An individual or their family may decide to pursue a civil remedy. They may decide to pursue a remedy that deals with the particular disciplinary board that regulates that profession. However, I'm not sure that's enough to help bring home the point to health practitioners that they are

obligated to not substitute their own judgement but to follow the wishes of their patient, regardless of whether or not that person is capable.

"I would strongly suggest, along the lines of what has been imposed for substitute decision-makers, that similar offence provisions be included that would apply to health practitioners who breach their duties that are imposed by this legislation. Whether the offence provisions need to be as stiff as the monetary fines that are imposed, I'm not going to comment on, but I think there needs to be something more. If the point of this legislation is to make it easier for people to know that they can express their wishes and know they'll be followed, we need to impose the same requirements on both substitute decision-makers and health practitioners."

One of the real issues throughout this whole legislation process is the claim by the government that if people are unhappy, they have routes and they can make complaints. Of course, the real issue here is that we are dealing with vulnerable people who have been declared to be incapable, and the government knows very well that those people are unlikely to be able to pursue civil action, a civil tort. They are unlikely to have the money to pursue a civil tort and certainly, with what's happened to legal aid, it's virtually sure they wouldn't get legal aid to pursue a civil tort. There is no recourse for the vulnerable individual who believes that the health practitioner has breached this act.

That needs to be the responsibility of the state. It can only be the responsibility of the state if in fact there's an offence provision. The person can be charged, it can go before a court and the determination can be made as to whether the act was breached. There ought to be some sense on the government's part that it needs to offer this protection, given that it has taken away rights advice, taken away the ability of people to look after themselves under this act, taken away all the advocates who were set in place to make sure these acts did not mitigate against those who are most vulnerable.

Even in this case, where there's a clear breach, you want to force that vulnerable person to go through a lengthy and costly court procedure to get any kind of redress. I think that is very significant in terms of all the actions you've taken. It belies your words about how much you care and worry about the vulnerability of these people. If you are that concerned, and I have no reason to doubt your sincerity in that, this is a simple remedy for the fears they have expressed. I think it's extremely important that we listen to those fears and understand how important they are.

Health care professionals, if they're doing what they tell us they do, should have no reason to be concerned about this. You have touching faith in the colleges, you have touching faith in the professional ethics of these health professionals. Therefore, there ought to be no impediment to your putting an offence provision in because, if we are to believe you, you simply believe there will be no offences and therefore it's a moot point. It isn't, from the vulnerable people's point of view. From vulnerable people's point of view, this is the thing that says to them, "I can be sure that a health practitioner isn't going to say to me, as they have for centuries: 'I know best. I'm the

doctor, I have the training, I know best. I don't have to pay attention to your wishes or to those wishes as expressed by a substitute decision-maker."

I would urge the government to understand that this is an important issue and this is one of the few ways you could tangibly indicate that your words really mean something in terms of protecting the vulnerable.

1020

Mrs Caplan: I think this provision is premature, actually. The view I have is that the colleges have done a very good job in defining the requirement for informed consent. I believe the standards of practice and the discipline proceedings of the colleges are appropriate and adequate but should be monitored, and they are. If they prove inadequate, something like this should be done if there's a problem. I don't see that there is a problem today. In fact, the problem today is the chill that's in the environment. I think we have to send a signal that we want that environment to normalize, that we have confidence that people will act in good faith.

While I do have some discomfort with the extensive absence of liability in the face of the fact that there isn't in the statute an obligation to inform of rights, I'm hopeful that the government will agree with our amendment a little further on to actually be specific about that.

I do think it's premature to move to put an offence section in here, since the obligation with the colleges to discipline their members when they have treated without consent I think is something we should be watching and monitoring to see if it works before we include it at this time. I don't want to say I would be opposed to this if there were a problem, I just don't think there is a problem yet. While you could argue on this, "Well, prevent it, and this would add a chill," my concern is that we have too much of a chill in the environment now. You want people acting in good faith, you want to foster communication, and I just think it's premature at this time to add an offence provision to this legislation.

Mr Rosario Marchese (Fort York): I think the position of the Liberals and the Conservatives is quite clear. We disagree with both of them in this regard, and disagree very strongly. The issue is not whether the provision is premature or whether there is a problem yet. That's not the point. I think my colleague has made a different point: Is this important enough to us, and to some of the groups that have come in front of this committee, that we should put it in statute? AIDS Action Now said, "A health practitioner who contravenes sections 9 or 16 of the act is guilty of an offence and is liable, on conviction, to a fine."

There are groups out there who are very concerned about this. Are we concerned enough ourselves to say it should be in the statute so the health practitioner is reminded about how important a breach is? Is it preventive? Possibly. I'm not sure this in itself prevents a breach, but it states that it's important to us as policy-makers, as a reminder to a health practitioner, that it's very important. Again, I'm not quite sure that it is in itself a deterrent, but it's important to put it into the act. I don't believe we need another inquest to prove the point. I hope that will never happen.

We've gotten rid of the Advocacy Act—not "we." Sorry, whoever is listening—the Tories have repealed

this, the forces of no good have repealed this. They've repealed the Advocacy Commission, they have abolished rights advisers, all the very things that give individual vulnerable people protections. This is yet another section that in our view gives greater protection to vulnerable people in the event that there's a breach.

If there is a breach, there is a fine. We think that's good. If the "not exceeding \$10,000" is an issue, we can take that out and you could determine through guidelines what that might be. If it's important to you, as it is to us, this is something that should be in the act. It doesn't contravene anything else that you've spoken about. It doesn't contravene, doesn't contradict, but in fact complements what is already in law. If it doesn't detract, why would you not support an issue that in our view is a reasonable thing to put into statute? For that reason, we believe it's important to add and believe it's important to support.

The Chair: If there are no other comments on my list, I shall put the amendment. Shall it pass?

Mr Marchese: A recorded vote.

The Chair: I think this one will be easy. Even I can do it, because the clerk isn't here.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: The amendment fails.

We proceed to section 80, and the government has an amendment.

Mrs Johns: I move that subsection 80(3) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Same

"(3) No person who makes a decision concerning a personal assistance service on an incapable recipient's behalf shall make an assertion referred to in subsection 61(3), knowing that it is untrue."

It just changes "plan" to "service."

The Chair: Agreed? Thank you. That's carried.

Section 81. Shall that pass? There are no amendments. Carried.

Section 82. Mrs Caplan has a proposed amendment.

Mrs Caplan: I move that subsection 82(1) of schedule A to the bill be amended by inserting "subsection 9(3)" after "contravenes" in the first and second lines.

Mrs Johns: Mrs Caplan, I believe it's out of order.

Mrs Caplan: You're right. I withdraw.

The Chair: We are proceeding to proposed new section 82.1, Mrs Caplan.

Mrs Caplan: We have a replacement amendment which is being copied. If we could stand it down, I would be very happy.

The Chair: Is there unanimous agreement?

Mr Tilson: How long do you want to stand it down for?

Mrs Caplan: Five minutes, until it's photocopied.

Mr Tilson: Okay.

The Chair: Mrs Boyd, you have a new section 82.1.

Mrs Johns: Mrs Boyd, we have to do 114, I think, before we can do this, because this is consequential to 114, and we stood that down yesterday. Do you want to do 114 right now?

Mrs Boyd: We can if you wish.

The Chair: Why don't we stand it down? We've got a number of postponed sections. We have five. We could take the two of them at the end. Would that be satisfactory? Okay. We have unanimous agreement that the two proposed new sections 82.1 shall be proposed at the end of our deliberation of schedule A.

New section 82.2, Mrs Boyd.

Mrs Boyd: I move that part VI of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following section:

"Offence: reprisals for applications

"82.2 A person who takes a reprisal of any kind against another person because the other person made or assisted in making an application to the board is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000."

I would remind the committee that we heard a great many concerns expressed by vulnerable people, particularly those in institutions or those representing those in institutions, about the possibility of reprisals if they made application to the board. When you're a vulnerable and helpless person, perhaps confined to bed, perhaps confined to a wheelchair, perhaps neither but still dependent upon an institution or a caregiver, if it's in the home, for every single aspect of your life, the necessities of life, and you have no assurance that if you want to appeal against a decision that you're incapable, you in fact won't suffer as a result, it is very difficult.

1030

There's also the problem of staff in institutions who might wish to help a person make an application to the board over and above what has been decided by another health care professional or another person employed by the same employer. I would remind you that on February 12, again in Thunder Bay, we heard from a deputant who was representing the Family and Service Provider Advisory Committee, Mrs Eve Gillingham, who said:

"You must also recognize that there is the potential for conflict of interest between what the family and vulnerable person, or the service provider and vulnerable person, consider to be the vulnerable person's best interests. In addition, as service providers we sometimes find that our organizational or professional goals are in conflict with our ability to successfully advocate on behalf of vulnerable people. From my own experience, I know of health care professionals who have had their jobs threatened as a result of trying to advocate on behalf of a patient. Therefore, we believe it would be best to avoid any situation that may pose a conflict of interest."

There was remarkable silence from the health professionals, other than this particular person, who herself is a health care provider, about this issue. Yet we know, because of some of the findings in many of the reports that have come forward, that those who work in this field very often feel they cannot stand up for vulnerable people because it might affect their employment situation or it

might affect their relationship. Vulnerable people feel at the mercy of their caregivers, very often, and it is very important for them to understand that there is no possibility that there would be reprisals against them for daring to suggest that a decision by a health care provider was not appropriate. I sincerely hope the government understands the importance of trying to give that assurance to both health care providers and to vulnerable people that reprisals are not to be tolerated under this legislation.

Mrs Johns: The government is opposed to this motion, and it's not because we're opposed to the reprisal issue. I've taken this through a number of the ministry departments that would be working through this process, and they say the amendment is unworkable, that it's too vague. I've asked for clearer wording to be able to deal with this and have been unable to come up with any, so I don't intend to stand this down. The problem is that we have to deal with the issue of, what is a reprisal? We feel it would be a very difficult issue to ascertain, so we're going to be opposed to it.

Mr Michael A. Brown (Algoma-Manitoulin): We will be supporting the amendment. We believe that while it may be unclear in some respects, it is an important principle and the legislation does not really include it in any way. Just to be brief for the sake of time, I'm going to say we are supporting it because it's an important principle. If the government can't find a way to find an alternative—I really can't believe that. You should be able to find a replacement for this if you defeat it.

Mr Marchese: This is an important addition we're adding. This is important to protect individuals who feel, for a number of good reasons that many have told us in committee, that where they decide to help there are reprisals, or many people don't want to because they're frightened of reprisals. We understand that. We don't have to have a university degree to understand how reprisals work. We've probably been in workplaces where many people are silenced because of their fear of what an employer or somebody above them in a position of authority might do if they say certain things that would work against them. We understand that.

When you say the amendment is too vague, I don't understand what that means. "A person who takes a reprisal of any kind against another person because the other person made or assisted in making an application to the board is guilty of an offence." What's vague about that? What is vague about what is a reprisal? A reprisal can take many forms, sure, but a reprisal of any kind, in any form, is an offence up to a given amount of money, whatever that is.

Does a reprisal have to be clear to you? Do you need to understand what a reprisal it is? "You're going to be fired for saying that." "You're likely to be fired if you say this, but not that." What kind of reprisal language are you looking for? What kind of action are you looking for to make "reprisal" clear? For me, "reprisal" is very clear and takes in a whole range of possible actions against an individual. But is that why you wouldn't want to see it in there, because there's a range of reprisals possible? I just don't understand.

If you accept the principle we are stating here, if you believe it's vague, work it out. Find an appropriate word for "reprisal" or something that gives that individual

protection in the event they take an action to protect that vulnerable person. Do something. Simply dismissing it because you say it's unworkable or too vague is again a mistake and it's wrong. Don't you want a person who is assisting a vulnerable person to have protection of some kind? If you say yes to it, find the language if you think this doesn't do it. But to dismiss it is wrong. They're wrong, Mr Chair.

Mrs Boyd: It amazes me. I guess you didn't consult with the Ministry of Labour. Labour has many pieces of legislation which prevent reprisals. Your own labour bill at least maintained a prohibition against reprisals in some form, and the labour standards act, the Occupational Health and Safety Act—they all have clauses that guard employees against the possibility of reprisals if they whistleblow on things that are important or if they attempt to unionize and are not able to. You can find the wording. What we're saying here is if somebody tries to get back at a volunteer—that's another issue: volunteers. You want volunteers to go in. I can tell you that anybody who's done any work in this field will tell you that volunteers are very often the ones who are most helpful. And what happens to them if they help in these situations? They get told by the organization they needn't come back in, and that happens all the time. I really urge you to very clearly talk about it.

The Employment Standards Act spells out what kind of reprisals. It talks about reducing work hours. It talks about reduction of wages, because this is such a common thing when somebody tries to say an employer is not doing something. I think you would find that many of the ways in which we have found out about the problems vulnerable people have had at the hands of caregivers and family members have come because volunteers have been helping those people or have come because employees of certain health facilities have indeed said: "This is wrong. This person is not being dealt with properly." It just amazes me that you're unable to find the language. Stand it down, find the language, and at least give some assurance to people who are at the mercy of their caregivers that you will not tolerate reprisals against them for questioning those same caregivers.

The Chair: I have no one else on my list. I'd call for the question. Shall the amendment pass?

Mr Marchese: We're not going to stand it down? Anybody?

Mrs Boyd: Recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Ron Johnson, Parker, Tilson.

The Chair: The amendment fails.

Mr Tilson has pointed out that I did not ask for section 80, as amended, and 82, as it stood, to carry. Shall they carry? Carried.

1040

Mrs Caplan: We can do 82.1 now.

The Chair: Is that the wish of the committee? Right now we're doing it at the end of schedule A because we have a number of them.

Mrs Caplan: That's fine. Whenever you're ready.

The Chair: New section 82.3, Mrs Boyd.

Mrs Boyd: I just withdraw this. What's the point? The government has refused to require any kind of training of anybody around this act—no training, no education; it's not important. I withdraw.

The Chair: Thank you, Mrs Boyd. We shall now proceed to section 83 of schedule A, and Mrs Caplan has an amendment to clause 83(1)(b).

Mrs Caplan: I move that clause 83(1)(b) in schedule A to the bill be struck out and the following substituted:

"(b) for the purpose of the definition of 'evaluator' in subsection 2(1), prescribing categories of persons as evaluators, prescribing the credentials required of a social worker to be an evaluator and prescribing the circumstances in which evaluators may act as evaluators;"

Mrs Johns: Mr Chair, I believe this is out of order.

The Chair: I think this is consequential to a former amendment of yours, Mrs Caplan, that failed.

Mrs Caplan: Well, my hope is that the government would consider this. What this does is allow them, by regulation, to be specific and to include in the statute somewhere the words "social worker" and still give them the flexibility in regulation to be able to set that out as in the previous one. I don't think it is out of order, but if you insist, I will withdraw the amendment.

The Chair: I believe it's out of order, and the only way it can be considered is by unanimous consent. Is there that consent?

Mrs Caplan: Forget it. I'm not going to ask for that.

The Chair: Thank you. Mrs Boyd, clause 83(1)(b). What page is that on?

Mrs Boyd: It's 194. It needs to be withdrawn.

The Chair: Clause 83(1)(d), Mrs Johns.

Mrs Johns: I move that subsection 83(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following clause:

"(d.1) prescribing places, programs, providers and circumstances for the purpose of the definition of 'recipient' in subsection 2(1);"

This is consequential as a result of the word "recipient."

The Chair: Any discussion? Carried.

Clause 83(1)(e).

Mrs Johns: I move that subsection 83(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following clause:

"(e.1) prescribing excluded acts for the purpose of clause 2.1(1)(b);"

This is consequential to the earlier motion 2.1.

The Chair: Does everybody agree that this shall carry? Carried.

Clause 83(1)(f), Mrs Johns.

Mrs Johns: I'm on page 197.

I move that clause 83(1)(f) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "plan" in the last line and substituting "service."

The Chair: Carried.

Clause 83(1)(f), Mrs Boyd, on page 198.

Mrs Boyd: I believe this needs to be withdrawn. It would have been consequential on education for health care practitioners.

The Chair: That is withdrawn. We have Mrs Johns, clause 83(1)(g.1).

Mrs Johns: It's on page 198a. It was a motion that was given this morning.

I move that subsection 83(1) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following clause:

"(g.1) regulating the amounts that a person who is entitled to copy medical or other health records under subsection 74(2) may be charged for copies of the records;"

This motion is in respect to Mrs Caplan's statement yesterday that we wanted to be able to charge appropriate levels for people who were only taking small sections of a report versus larger fees if people asked for the whole report and did it consistently. This is the ability for us to set up regulations that would allow us to do that.

Mrs Caplan: I support that and I prefer that to what the government originally stated. I hope that in their regulations they will make sure that individuals do not have to pay for a reasonable request, and I think everyone could apply a test of reasonableness. People shouldn't be charged for a few pages of their reports.

The Chair: Quite right, Mrs Caplan. Shall this amendment pass? Carried.

Mrs Caplan: What page are we on?

The Chair: Clause 83(1)(h), Mrs Johns.

Mrs Johns: I'm on page 199. I move that clause 83(1)(h) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "the member of the staff of a care facility who is responsible for a personal assistance plan" in the fifth, sixth and seventh lines and substituting "the member of a service provider's staff who is responsible for a personal assistance service."

This is consequential.

The Chair: Carried.

Clause 83(1)(i), Mrs Johns.

Mrs Johns: Page 200. I move that clause 83(1)(i) of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by striking out "plan" in the fifth line and substituting "service."

The Chair: Carried.

Clause 83(1)(i.1), Mrs Caplan.

Mrs Johns: I believe this is out of order, Mr Chair.

Mrs Caplan: I'm going to withdraw.

The Chair: Thank you, Mrs Caplan. We're going over—

Mrs Caplan: Page 202, I hope the government will support it. Are you going to call that one now, or on the next one?

The Chair: We still have part of 83.

Mrs Caplan: Subsection 83(3).

The Chair: Subsection 83(3), page 202. Mrs Caplan.

Mrs Caplan: I move that section 83 of schedule A to the bill be amended by adding the following subsection:

"When regulations come into force

"(3) A regulation comes into force on the day that is the later of the day that is four weeks after the day it is published in the Ontario Gazette and the day it would come into force absent this subsection."

The intent of this, although it's technical, is that it would require gazetting—that is, publishing—of a

regulation. It would allow four weeks of scrutiny before it comes into force. Because regulations are made behind closed doors and the government does not have to do any kind of consultation or discussion prior to the implementation of a regulation, this is a safeguard, and it's in the government's interest to do this. What this says is publish it, let people know what you're planning. It gives them four weeks to come to you and say, "You haven't thought about this aspect." You make a change or not, but at least you had a chance to notify people. It not only gives them an opportunity for notice prior to it coming into effect, but it also gives them an opportunity for notice to plan for what the impact of it is likely going to be.

We think that it's reasonable. It doesn't cost the government anything. It gives a little bit of time for those people who are going to be impacted by regulations to be able to go and say, "Whoops, you made a mistake, we think you didn't consider this." We've seen many amendments to this legislation that I think, as I mentioned before, could have been avoided if they had shared the actual wording of the legislation prior to the tabling. Similarly, I think many problems could be resolved if you give some time—and we think four weeks is reasonable—for gazettement of a reg. I hope the government will support this.

Mrs Johns: The government is opposed to this motion. Mrs Caplan moved this motion throughout all of Bill 26 and we opposed it at that time. What we believe is that regulations may need to be provided for—

Mr Michael Brown: Good thing to bring up.

Mrs Johns: —less or more time. It depends on the reasons why the regulation needs to be out, who it affects, how quickly we have to enact something. I believe that this is a policy that needs to be decided on a government-wide basis and that we shouldn't be doing it in specific sections. I will certainly bring this up with the government in a caucus meeting in the future to talk about this, but we are rejecting this today.

Mrs Boyd: Just another example of the unwillingness of this government to make sure that those who are required to carry out the provisions under an act don't have any information about how they're to do that ahead of time so that they can do it effectively. At each step the government has refused to admit or allow that there needs to be education of those who are going to be acting under this act. They've refused to require that education, and now they're refusing even to give the period of time required for people to become familiar with the regulations. It is just absolutely typical of a government that has no interest in making sure that the legislation it has put forward is understood by people and can be acted upon properly. It's disgusting.

1050

Mrs Caplan: The first thing I want to say is that there is a precedent and in fact the precedent was in Bill 26 and you did accept an amendment to gazette when it came to Natural Resources.

Mrs Johns: Not from Health.

Mrs Caplan: No. If you will check Hansard, what you said is that this should be government-wide policy and that Bill 26 was your precedent and that's why you weren't accepting it. The reality is you did accept it so you do have a precedent. The precedent is Bill 26. To use

that as your precedent for why you're not going to do this is not a valid, legitimate reason.

I could argue the fact that you do have one precedent under Natural Resources is a good reason to do it, but that's picayune and that's why I think your defense of not doing it is ridiculous, frankly, because it is good public policy, it is good lawmaking, it is good government to have the kind of openness and transparency that encourages people to know what you're doing, to understand what you're doing, to have a chance to let you know what they think about what you're doing, that fosters education, it fosters understanding, it fosters goodwill and it fosters a sense of good government in a civil and civic society.

Frankly, I just don't understand why it's okay to do it for fishes and not for people, you know? In Bill 26, you're going to be gazettement your regs under the Ministry of Natural Resources that deal with wildlife and fish and all of that. This is far more important, and because the Ministry of Health said no, it wasn't going to do it for other things under Bill 26—you know, Mr Tilson, I don't want to be provoked by getting into a debate on Bill 26, but if that is your model for lawmaking and if that is the precedent that you're naming—I am frustrated because of your lack of any kind of understanding of what you've heard before this committee. You didn't consult before. People were not given the opportunity to review what you were doing. If you had, they could have helped you draft better law.

You have not been responsive to many of the concerns, some of them minor ones, like changing "service" to "plan." We got 40- or 50-odd amendments that do that. That could have been avoided. You said: "We were responsive. We listened. Look how we changed it." I'm telling you, that is minor compared with many of the concerns that people have expressed about this legislation.

In the fact that it's minor and that you did respond, that is good, but I'm telling you that if you'd let them look at the legislation in advance, it would have saved you all of those amendments that have been technical in nature to respond to that and that of all the concerns that were raised before this committee, you have not responded to those that are major and serious. To say that you're opposing a reasonable amendment to just let people know, give them four weeks before a reg comes into authority and into law—because a regulation has the full weight of the law. To say no to a reasonable request to just let people know, give them a little bit of time I think is a style of government that is going to be the downfall of this government.

I just want to go on the record of saying that that principle and the fact that you will sit here today and say, "This is a government-wide policy; we don't let people know about anything. We are not going to tell you what we're going to do; we're just going to do it. We're not going to consult with you in advance; we're not going to give you a chance to even understand it or know or question," that will be the downfall of your government, because it is the height of arrogance and it is the height of a lack of understanding of democratic principle of the public's right to know and to understand.

It is fundamental in our democracy for people to feel that the government is open and that the government is accountable and that what it does is transparent. I have to tell you, of all the amendments that we put forward, this was the one that I was sure you were going to accept, because of the fact that it is so reasonable. It costs you nothing to do it. It costs the government nothing to commit to letting people know, giving them four weeks before they implement something that can have a dramatic effect. Why do I say "dramatic effect"? Because the reg-making powers in this bill are enormous; the reg-making powers in Bill 26 were unprecedented. To do all of that behind closed doors, without any accountability, without any formal consultation required, without anybody being advised, without giving them a chance to tell you that what you're doing isn't going to work or it's silly or, "Here's a better way," without giving them that kind of opportunity—and it is opportunity to participate; that's what this is about.

If you think I'm upset, I am. If you think that I think you're unreasonable, I do. If you think that I think this leads to bad governance, it does. While there's much in this bill that I can support, what I find very difficult is to understand why you would object to sharing information, giving people a little bit of time to adjust to the changes that you're going to make under this bill and under other bills. If that is the government-wide policy, then I say to you—and I know that you didn't make the decision; this is your minister's decision; this is Premier Harris's decision—I can tell you, it's a bad decision.

Mr Marchese: Just a few things, Mr Chair. I support this motion. I think it's a good motion. It would be good if governments had policies around that so that we don't have to hash this out in opposition, as you did before and as we're doing now, Mr Tilson.

So it's sad that we have to do this in opposition all the time, because there's something to be learned from this. It would be good government policy to allow for this so that you allow for scrutiny of regulations. I know governments are always afraid about that kind of scrutiny—oh, yes, but you are, otherwise why would you oppose it? If that's not why you're opposed to it, then I don't quite understand, because if you were passing regulations, wouldn't you want to give people the time, those who have come here before you, an opportunity to talk to you about them, to give you feedback again in terms of how it might work? Wouldn't that be useful? It's good government policy, generally speaking, to do it. It applies to every government.

I don't mean to say that we've all been guiltless in this regard, as we speak. We've done this on employment equity as a former government. It was a tough bill; it was a difficult one. So we did apply this kind of rule to employment equity. So it's not as if you don't have precedent to do this; you do have precedents. But it is on the whole good policy for every government to apply this to whatever it is they pass, because you're protecting yourself and you're making good government. It is a good democratic principle to uphold.

I understand the difficulties that some of you face in government. I just hope that one day we'll be able to look at these things a little more reasonably in terms of

how we're able to allow the public and government to achieve good policy in the end, that is beneficial to governments, to those who govern, and those who are governed.

This is not a tough thing for you to do; not tough at all. If you needed to stand this down to think about it, you could, but obviously not.

Mr Chair, they're wrong again and we're ready for the vote.

The Chair: Thank you, Mr Marchese, for assisting me there. Shall this amendment pass?

Mr Marchese: A recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: The amendment fails.

Mr Michael Brown: Mr Chair, I move that section 83 of schedule A to the bill be amended by adding the following subsection:

"Approval of commissioner

"(4) The Lieutenant Governor in Council shall not make a regulation under this section that may affect the privacy of medical records unless the provision has been approved by the Information and Privacy Commissioner appointed under the Freedom of Information and Protection of Privacy Act."

I think the explanation is almost self-apparent from the motion. What we are saying here is that the privacy of medical records needs to take place and that, clearly, the person in this province we have charged with that responsibility is the commissioner appointed under the Freedom of Information and Protection of Privacy Act and that Ontarians, particularly those vulnerable Ontarians who will be affected by this act, should have the ultimate in protection of their health care records. I think in these cases it's maybe even more important than it is generally in the public. I know as a member of the Legislature that my constituents would tell me there is nothing they fear more than the disclosure of private health information in terms of their own personal privacy.

I think it's a very reasonable amendment that does not inhibit the operation of this act in any way and provides Ontarians with the assurance that privacy of health records will be looked after.

1100

Mrs Boyd: In fact, it was my understanding that there was a commitment made to this by the minister in terms of the concern that had been expressed by the committee. So I sincerely hope—

Mr Marchese: Well, they're working it out.

Mrs Boyd: Oh, you're not going to put it in? You are going to put it in? You're in favour of this motion?

Mrs Johns: No.

Mrs Boyd: Oh, well, of course not, because all we have to do is, again, we're going to take the word that this is going to happen, and again there's no protection for people around a very sensitive issue. This is a government that has trampled, frankly, on the notion of privacy

in Bill 26 and again, possibly, here. The privacy commissioner has expressed concern, and we don't believe that regulations—there are many, many places where regulations are going to be made concerning the disclosure of information, and it is not appropriate.

Mr Marchese: They didn't express concerns around this, they say, but around that, substitute decision-making.

Mrs Boyd: Oh, good, we have an explanation. The Attorney General is concerned about privacy; the Minister of Health isn't. The Attorney General expressed concern, but not the Minister of Health. Well, that explains it all.

Mrs Johns: As we all know, when the privacy commissioner came in, we asked the privacy commissioner if he had any concerns with the health portion of the bill. The only section he had concerns with were in the SDA, which we're putting forward some amendments on.

In effect, what has happened over the course of our time in government is that we, as the Ministry of Health, have made an agreement with the privacy commissioner that we will work towards providing a global look at health care and how we can best protect the rights of the individuals. We have made a commitment to them. I've been to two or three meetings with the privacy commissioner, and we are looking at focus groups and potential legislation in the future about the privacy of people. That is something that he has been trying to do for a number of years, and this government and the Minister of Health have made a commitment that it will happen. So we are working to be able to do this.

The privacy commissioner has said he has no concerns with the changes in the HCCA. We do not believe that this is necessary and we will be opposing it.

Mr Michael Brown: That explanation is absolutely beyond comprehension. If the government is concerned with this issue, it hurts absolutely nothing to have it in here. The only reason for opposing this could be that you really don't want this provision in here. It doesn't hamper government whatever to do this, but it does, or as much as anybody can, it ensures the privacy of the health records of Ontarians.

I think the credibility of this government is already largely in question on questions of privacy, and I don't see how this—I'm not trying to be confrontational here. I just don't see how this could in any way hamper the efforts of the Ministry of Health, or could hamper anything, and would have the benefit of ensuring the protection that all Ontarians believe they should have. Just, I guess, bewilderment over here is the sense.

Mr Tilson: You people are always bewildered.

Mr Michael Brown: Thank you for that, Mr Tilson.

Mr Bernard Grandmaître (Ottawa East): I simply have a question. Mrs Johns just said that her government had made a commitment to safeguard medical records. Why can't you do it through this motion, then, if you have a commitment to do it?

Mrs Johns: I've stated the reasons why we're not going to do it under this amendment. What we're going to do is—

Mr Grandmaître: Well, tell us about your commitment, then. What is your commitment?

Mrs Johns: The commitment is that we're going to look at the confidentiality of all health records for all

Ontarians. We have to go out and consult, as you have suggested.

Mr Grandmaître: You will pick and choose.

The Chair: Mr Tilson, did you wish to speak?

Mr Tilson: Who?

The Chair: He was on my list. I had no choice.

Mr Tilson: I've never heard such an amendment as this in my life, because essentially what you're saying is that the privacy commissioner has the right of veto over government legislation. That's absolutely nuts. The law, as passed, the privacy law, the information and protection of privacy act, doesn't give the commissioner this mandate. Why in the heck would you? It's as simple as that.

There's no question that any government, whether it be Liberal, New Democratic or Conservative, has an obligation to consult with the privacy commissioner on sensitive issues of confidentiality of, particularly, health records, and we certainly have and we are continuing to do that. But if you think that we're going to give the veto to an unaccountable official—

Mr Grandmaître: Oh, oh, oh.

Mrs Boyd: Unaccountable.

Mr Tilson: Well, that's exactly what you're saying. The only people that are accountable in this situation are those that are elected by the public of this state. You're simply saying, "Well, they must put their stamp of approval on it."

Now, there's no question we respect and intend to continue to consult with the privacy commissioner, but I think it would be most inappropriate to say that these types of laws must be approved. There's no question as well that the privacy commissioner comes to committees such as this, and he or she, Mr Wright or whoever the privacy commissioner is, will continue to give their opinions to committees such as this and to the sitting government at the time as to whether or not proposed laws violate the Freedom of Information and Protection of Privacy Act. Any government that's worth its salt, particularly our government, will continue to consult with that commissioner.

But I think it's most inappropriate to have the word "approve" legislation. I can only say that you say that you're bewildered about not accepting it. I'm bewildered as to why you would even put it forward in the first place.

Mrs Boyd: Well, it's very easy to understand why they would put it forward. They would put it forward because there are many people in this province who, given the behaviour of this government around the confidentiality of health records, have real concerns that in fact they can rely on this government to be concerned.

I'm very interested. I'm just wondering what state Mr Tilson is talking about. Have we become the 51st state already? You said, "of this state." This isn't a state; it's a province. At least in our language we might remember that once in a while.

The Chair: Thank you, Mrs Boyd, for that correction.

Mr Tilson: Don't challenge my patriotism, Mrs Boyd. Don't be so condescending.

Mr Michael Brown: I don't want to belabour the fact, but the privacy commissioner is subject to review. The courts can review what the privacy commissioner says,

and frankly, Ontarians trust those courts more than they trust not just your government, but any government. This isn't an affront to a Conservative government or an NDP government or a Liberal government. This is just a way of raising the privacy issue to one higher level, rather than leaving it in the hands of a Parliament which sometimes makes decisions that are rather spectacular.

We go back to Bill 26, and if you'll remember, we had a Minister of Health come out and say, "There's no problem with privacy here," only to find out a day later that we have a letter from the privacy commissioner saying there are big problems. Mr Wilson was in backstroke trying to get away from that and to change his mind.

We're just saying this is a sensible amendment. You're not giving the privacy commissioner total authority, but you are saying, "Look, it'll be subject to courts if he makes the wrong call, but let's just protect Ontarians to the fullest extent possible." That seems totally reasonable to us.

1110

Mr Tilson: Response to that.

The Chair: Well, no, I'm sorry. Mr Marchese is next. I'll put you on the list if you wish, Mr Tilson.

Mr Marchese: I just wanted to disagree with the argument that Mr Tilson puts forward. He says that to approve this particular amendment as it relates to the regulation, not the legislation, would be to in effect give the privacy commissioner a veto, and that that would be an affront to Parliament.

What this is saying is that when we're talking about issues that may affect the privacy of medical records, it's important to the opposition and it's important to the public and the consumers that such things be protected and that they be reviewed by the privacy commissioner, and it's important enough that if he or she felt that there was a breach of any kind, it's important that he or she had that power to say to the government, "There's a problem here," and that it not be passed until that person agreed with whatever amendments they're proposing.

It's not an entirely unreasonable thing to expect that the commissioner should have such a power, to be able to say to governments, "There is a breach here, or possible breach." So this does not contradict anything that the government is doing. They may have consulted. He may have said there's not a problem. But this gives further protection, and it's not, in our view, that much of a big deal.

The Chair: Mr Tilson.

Mr Tilson: Just a comment to Mr Brown. The information and protection of privacy act only applies to the government of Ontario and its various institutions. It doesn't apply, I don't believe, to the private sector that might be involved in health activities.

Mrs Boyd: All the more reason.

Mr Tilson: Well, it doesn't. It doesn't have that mandate, and aren't you essentially—I'm not going to repeat my argument to you, but I will add that one, that this section would really contradict what the information and protection of privacy act is all about. The information and protection of privacy act deals with information that is about individuals that is under the jurisdiction of the government of Ontario or its institutions, and your amendment goes much further than that.

Mr Garry J. Guzzo (Ottawa-Rideau): I want to make two brief points. The first one has been touched on, and I'll leave it alone, by Mr Tilson.

The second one is this: that if you're sincere—and I suspect you are—with regard to this, you would address not just this piece of legislation but numerous other pieces of legislation dealing with similar aspects and under the information and protection of privacy act you'd provide the commissioner with the same powers with regard to those pieces of legislation.

If ever it should have been addressed, I would have thought it would have been in the last Parliament, when this particular issue was probably touched upon with one unfortunate situation regarding issues surrounding this and a rather untasteful situation regarding a situation with regard to privacy breaches of that act. If it was ever to be debated and looked at—I mean, really, to do what you want to do—and there's an argument to be made for it, Mr Brown. I don't know that I would agree with it, but I think it may be something that should be looked at. But it has to be done with regard to an amendment to the information and protection of privacy act and affect all legislation, not just this particular act.

The Chair: Thank you, Mr Guzzo. Hopefully, Mrs Boyd will conclude this debate.

Mrs Boyd: Well, I can't let that stand on the record without responding to Mr Guzzo. The particular instance he's referring to is the inadvertent release of a name in reference to a medical record by the Minister of Health of the time. She resigned. It was considered very serious that that happened. And when you say there should have been a review of the act, the act was fine. It was breached. The person resigned. So I really take very great exception to trying to say it should have been reviewed as a result of that incident. It had nothing to do with the act.

I agree with you that we should be looking at the Freedom of Information and Protection of Privacy Act as we go along, as we get more experienced. This is relatively new legislation in terms of the length of time it's been operating and the problems that come forward from time to time. I would agree with Mr Guzzo that it should be. I sincerely hope that his opinion will carry sway in his government. As this government has certainly behaved in a way that has caused real concern among the population about your respect for privacy, your claims that there's no problem with privacy—and clearly there is—should lead you to review that act with a goal to showing the public that your fine words about wanting to protect the privacy of individuals really carry you through to revising that act and making sure that it happens.

I would agree that probably, as we move more and more into the information age, it's going to be more and more important that any government that happens to be in power is committed to ensuring that not only particularly the health records but frankly the personal records of every citizen are protected, and that it not only be committed but it be seen to be committed by what it does. This would have been an opportunity for this government to show that it was prepared to put its words into action.

Mr Michael Brown: I appreciate the comments of the parliamentary assistant, Mr Tilson, and Mr Guzzo. I share

with them the view that the Freedom of Information and Protection of Privacy Act needs to be looked at. Especially in the health area, there needs to be a total review of the way that system presently works. I think that's because our society is changing rapidly in terms of information technology and government accountability. We hear all kinds of interesting ideas about how physicians will be accountable, how other professions will be accountable. It takes a lot of cross-referencing of information, which means it's got to be somewhere. So yes, that's got to be addressed, but that doesn't mean we can't address this particular issue which deals, as I remind you, with the regulations, not with the act itself.

So we're very concerned that a government—you've already refused the idea that we can gazette them and the public would look at them for four weeks before they're actually in effect. Now you're saying you don't even want the approval of the Information and Privacy Commissioner. I find that really quite odd. We can do something here. We should do something here. Yes, the broader issues need to be addressed, but in the meantime we can do something of significance here. So why not?

Mr Guzzo: Just to clarify, I want to accept the point that Mrs Boyd makes. I suggested that there were two instances, and one was unfortunate. I accept that the minister did resign after a period of time, did the honourable thing and did the appropriate thing, and that's the one I referred to as being unfortunate. The other one had something to do with a member from the north and had something to do with a lie detector test that I think this committee came to deal with, and that's the distinction, but I do accept your clarification with regard to that aspect of it and that minister. Thank you.

The Chair: Mrs Caplan, you've missed most of the debate.

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Mrs Caplan: I actually had a call in my office. As you know, there's a TV screen in the office, so I was able to do two things at once and was able to watch the debate. I know what was said and I hurried down here after the fact, because I felt very strongly about what was being said and I wanted to be sure that I was able to point out that the government has made a commitment to consult. They have made no commitment to do what they are told is the right thing to do, and that's why this effectively is a sign-off. I think that when you gave the commitment at committee that you were going to consult with the privacy commissioner, people thought that meant that he would have to approve what you were doing. All this does is put in statute the commitment that people think you made.

I don't understand why you would have any concern about this since you want to, we understand, make sure that confidentiality of medical records is protected, that the advice of the privacy commissioner is listened to and taken. That's all this does. Just as we have argued before on other cases, if you believe in this, you'll support it; if you don't believe in it, you'll vote against it. What does it mean to believe in it? What it means is that you think that confidentiality of medical records is important, and particularly because we have seen legislation come forward where the privacy commissioner had very serious

concerns, where opposition members, myself included, stood up in the House and said, "Whoa, you've made a mistake," and your ministers gave false assurances that everything was okay and this was all covered by the freedom of information legislation.

What this would say is, "You don't have to worry about false assurances on regulation, you don't have to worry that any regulation can be drafted that's going to have a negative impact on the protection of privacy, because this amendment says that the government has to consult with and listen to the advice of the privacy commissioner." It's that simple. It means that he has to say that any regulation you draft solves the problem. What's the problem with that? If you say you're going to do it, do it. If you're telling us, as I heard Mr Tilson say, that you've said you're going to consult with him—well, I ran downstairs here because "consult" doesn't mean "listen to," and that's exactly why this amendment is needed.

The privacy commissioner has authority over legislation, but no authority over regulation. In this legislation much can be done by regulation that could have a very serious negative impact on confidential medical information. The protection of individual medical records is something that we believe is important enough to warrant legislative protection, and since the government says that it agrees with us that medical records should be protected, and since the minister—in fact, he issued a press release that said, "It doesn't matter what my bureaucrats think. I'm going to listen to the privacy commissioner. I'm going to do what the privacy commissioner tells me"; he did that around Bill 26—has made a public commitment that he's going to listen to the privacy commissioner, what possible objection could he have to putting that commitment into the statute?

If you vote against this, people will not trust you. You've said you're not going to let them know; you're not going to gazette; you're not going to give them a chance to see what you're doing; you're not going to give them a chance to say, "We think this may have an impact; give us an assurance it's all right or let us make a suggestion that might be helpful to you." They're not going to have that chance. You're not even going to let the privacy commissioner sign off to say this is okay. I don't understand why you're worried about this amendment.

The Chair: Shall the amendment pass?

Mr Marchese: A recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Leadston, Parker, Ron Johnson, Tilson.

The Chair: Shall section 83, as amended, pass? Is there any objection? Carried.

We are now going back to the postponed sections, section 5, which is on page 96a of the motions book. I'll let everybody get their place and remind themselves of the issues involved on that motion. Page 96a was a

motion of Mrs Caplan's and has not yet been moved; we reserved that. Would you like to move that, Mrs Caplan?

Mrs Caplan: I move that section 5 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsection:

"Exception; research

"(2) Despite subsection (1), this act applies to giving or refusing consent to a procedure whose primary purpose is research if the person on whose behalf the consent is to be given or refused has given a power of attorney for personal care that authorizes the attorney to request or consent to the procedure."

We stood this down in the hope that the government would find this acceptable. I'd like to hear from them.

The Chair: What is the position of the government, Mrs Johns?

Mrs Johns: The government's opposed to the motion. There are many issues around giving and refusing consent to procedures whose primary purpose is research. The government requires time to consider the full implication of Professor Weisstub's report pertaining to research ethics. He has a report that has just come into the ministry now, 500 pages, which we are translating and we are getting ready to put out into the community for consultation. We feel that full consultation has to happen with respect to this report because there are a number of issues that have to be addressed before we can put research in.

I just want to give you a couple of them that they mentioned to me so that you will know that we've considered this and we will be considering it further. Can a power of attorney give an attorney the authority to decide to place the grantor in a research study? Legal arguments go both ways with respect to this. That's an issue that we have to do some public consultation on. How are decisions about research to be made by the SDM? The HCCA's best interests criteria do not apply.

The third one is that Professor Weisstub's report states that where an individual is incapable and the research proposal would pose a substantial risk, a provincial ethics review board should review the proposal irrespective of the prior capable wishes. We have to consider that also. This concept is not in the HCCA and that is therefore a problem for us. Professor Weisstub's report stipulates that the SDM should have discretion to withdraw the incapable individual from this research, despite prior capable wishes, if the experiment has more than a negligible risk. So we have to consider that because this concept isn't in the HCCA also.

A person's assent is required even if they are incapable, according to the report. If there is an objection, Professor Weisstub stipulates that research should not continue. Again, these concepts, explicitly revolving around research, have not been included in the HCCA.

I agree with the concept. I think we have to do a lot of consultation before we can move forward on this. I think that we'll be having the report out in the next few weeks and I'll make sure that everyone on the committee gets one.

Mrs Caplan: I want to go on the record: The purpose of this amendment is that while we recognize that there are many implications, an individual should be able to specify clearly in a power of attorney what their wishes

are. I think the issue of the ability of the substitute decision-maker to withdraw someone from a research study should be a power that is under the ability of the power of attorney document. But the fact that today these issues are just beginning to be debated and discussed, the principle—and that's what this is—that says that a substitute decision-maker should be able to make those decisions, conscious of the prior wishes and the directions of a person who writes a power of attorney, is a reasonable principle. This amendment would not in any way dictate the results of your consultation. In other words, it would facilitate what you're going to be doing.

What you're saying is that you're going to consult on all of the issues, and I agree that there are issues. But right now there is no authority in law for someone to give direction in a power of attorney for the purposes of research. I think you should be able to do that. It's unclear as to whether or not you can do it. This would make it clear. I'm taking my advice from the lawyers in the room. The issue is that the law is unclear. The law is unclear today whether or not a substitute decision-maker can consent on behalf of an incapable person. All this would do—and I think it's reasonable to have the clarity that says where you have it written in the power of attorney. I'm not saying where you are aware of prior wishes; this says it must be written in the power of attorney for you to be able to consent.

1130

I think that's a protection to a vulnerable person, I think that is an opportunity for someone to think about that and have an advance directive in the power of attorney, and I don't believe this interferes in any way with the important work Weisstub has done or the broad consultation you're undertaking. While I understand the issues you raise and the points you raise, and I agree that has to happen, all this does is clarify something which is unclear in law today, to say that you have to be specific whether or not you want to give your substitute decision-maker that power in the future. I think that's a reasonable provision in the legislation because it is unclear. You might want to ask advice from the lawyers before you make a final decision on that.

Mr Tilson: I was just going to do that. I was going to ask Ms Spinks to come forward.

Mrs Caplan: Thank you.

Mr Tilson: This debate on this issue also applies to the substitute decisions part of the bill.

Mrs Caplan: Yes.

Mr Tilson: I think there are some amendments as well that one of you has made on that very topic and it seems to me we might as well get this issue dealt with now, if Miss Spinks could come forward.

Ms Trudy Spinks: I take Mrs Caplan's point, and she's correct. The law isn't, as I see it, clear whether or not a person who makes a power of attorney can give that kind of advance instruction, and whether or not, if it is in the document, the designated attorney can act on it when it's a matter of consenting or refusing participation in research.

However, the whole area is extremely complicated. Those who are experts in the field of medical research feel it needs to be carefully considered what needs to be

attached to any section like the one you're proposing before it is enacted, because if it went in alone it may have some repercussions we might not want.

Therefore it's preferable, and I think those experts in medical research, and they've spoken to us on numerous occasions about the issue of research and the SDA—I believe when the SDA was considered initially, the subject was debated at some length and it was felt that the safest course was to introduce the section we have now in section 66 of the Substitute Decisions Act, which says nothing in this act affects the law concerning research, in order that the kind of work Prof Weisstub has undertaken, which canvasses and considers and analyses all of the very serious implications and issues around this, can be dealt with before there is a change. So I agree it's unclear. I'm not sure it would be an appropriate response to clarify it with one line in a bill without looking at all the issues.

Mrs Boyd: We can't help being sympathetic to the argument that we need to be really looking at all the implications. In the meantime, there were many people who came before us, particularly from the AIDS community, who were urging us to allow their community the possibility of making this decision. I think you're only going to see this in cases where someone has a disease that they understand eventually may make them incapable, and where they are clearly saying, "I have a commitment to research around this disease and I want to be able to continue to participate because I understand that as the disease progresses, it's very important for there to be people available who are able to participate in this when they get to that stage."

With AIDS, it's a particularly difficult issue because the probability is very high that people will get to the stage where they will be incapable and will not be able to give that consent. Those who can, do, and do all the time. Similarly, I think there are other diseases that are like that: ALS is another, muscular dystrophy is another, multiple sclerosis is another, where people may become incapable, may be engaged in research projects, and there needs to be some clarity whether they can continue, whether that treatment can continue or that research can continue when they become incapable.

This is going to be a major disappointment to a lot of groups that have a very deep commitment to trying to resolve life-threatening issues that face them right now. Waiting for more discussion is going to make it difficult for them and I think the government needs to be aware that this will happen, that there will be very deep disappointment on those people's behalf.

Mrs Caplan: I'm going to make one last point. Not only are we talking about diseases like AIDS, Alzheimer's, ALS and MS, any of those degenerative diseases, but we're also talking about an issue which is much broader than those diseases, and I recognize that. I see this as a temporary, at-the-moment provision, recognizing that there are going to be changes coming. I think you're quite right when you say you're not going to deal with the whole issue by one line that permits this is the meantime, but the reality of the way government works, and the priorities of what gets on a government's agenda and the time line for this would suggest that your consul-

tations that you're undertaking and the work that is going on could take quite some time.

I see this as a temporary provision to deal with an issue that has been raised by those people who know they have a degenerative disease who want to be able to clearly state their desire to participate in research. The law is unclear about that, we've heard that, and this is something that could be a temporary measure. I'd like you to consider it along those lines. I don't think it would interfere in any way with the consultations that would be ongoing on the broader issues we all realize are there.

Mr Marchese: I just want to state for the record that I'm very sympathetic to the argument the government and the legal adviser are making with respect to this, because it can have repercussions, obviously, in a whole variety of different fields. That I appreciate. But I guess we're leaning, in support of this amendment, towards the most immediate kinds of problems that people are suffering. Where they indicate this is what they want, we're quite willing to say that, in the meantime and in spite of some of the implications, it's best to provide assistance to those people who obviously might benefit from it, even though it might have some other, broader implications down the line. But I did want to say I understand the argument you're making.

The Chair: Shall the amendment pass?

Mrs Boyd: Recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Ron Johnson, Klees, Leadston, Parker, Tilson.

The Chair: Shall section 5 pass? Carried.

We are now moving to section 12. Mrs Boyd is going to have to assist us, because I believe we have to withdraw the first motion, which should be on page 100. You should have two 100s, and then move the second one.

Mrs Boyd: Yes, Mr Chair. I withdraw the original amendment and would like to move its replacement.

The Chair: I have three in all. Perhaps you could assist me.

Clerk of the Committee (Donna Bryce): There are two 100s and one 100a.

The Chair: Oh, that's 100a, so it's the second one.

Mrs Boyd: I'm just trying to figure out what the note from leg counsel means.

Interjection.

Mrs Boyd: Oh, okay. I'm sorry, I'm missing—there are two, aren't there?

The Chair: Yes.

1140

Mrs Boyd: Okay. There is a replacement motion for the original 100 and I'd like to read that into the record.

Mr Tilson: That is not withdrawn.

Mrs Boyd: No, it is not withdrawn. It was the original, not the replacement motion. The replacement motion has been discussed with leg counsel and with the parliamentary assistant and the counsel for the Ministry of Health.

"I move that section 12 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be struck out and the following substituted:

"Plan of treatment

"12. If a plan of treatment is to be proposed for a person, one health practitioner may, on behalf of all the health practitioners involved in the plan of treatment,

"(a) propose the plan of treatment;

"(b) determine the person's capacity with respect to the treatments referred to in the plan of treatment; and

"(c) obtain a consent or refusal of consent in accordance with this act,

"(i) from the person, concerning the treatments with respect to which the person is found to be capable, and

"(ii) from the person's substitute decision-maker, concerning the treatments with respect to which the person is found to be incapable."

The Chair: The government position?

Mrs Johns: We're going to approve it. We agree with it.

The Chair: As it stands?

Mrs Johns: As she just read it.

Mr Michael Brown: The shock in your voice.

The Chair: No, It wasn't shock. Part of it was handwritten, that's the only thing I was referring to, because I wanted to make sure that we had the exact thing on the record. Is there any opposition to the passing of this motion? If not, all those in favour of the amendment? Thank you.

We then have a third-party motion, which again is handwritten, being 100a. Is that correct, Mrs Boyd?

Mrs Boyd: That's correct.

I move that section 12 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, and as just amended by the standing committee on administration of justice, be amended by adding the following subsection:

"Right to speak to practitioner

"(2) A person for whom a plan of treatment is proposed has a right to speak to any health practitioner who administers a treatment that is part of the plan of treatment."

This is important and I'll give the example that's most familiar to all of us, I think. When we go to a hospital and we give our consent to surgery, we know there will be many practitioners who are involved in that particular treatment. We very seldom meet all of those people. We very seldom have a chance to talk to them.

The one person whom we are most likely to meet is the anaesthetist, and when we talk about a team of treatment, there are different health practitioners who do different things. It would be important for the person to have a right not only to speak to the one person chosen by the team to present the plan and get consent to the plan, but to the individual who's actually going to do the treatment.

It is important to talk to an anaesthetist. The surgeon's expertise has nothing to do with the anaesthetist's expertise, and similarly, in a plan of treatment, for example, a nurse might present the plan on the part of the team, but the nurse might not be able to answer questions about physiotherapy, might not be able to answer questions

about one of the other health practitioners who's part of that team, whose speciality is not the nurse's speciality.

All this says is, yes, the plan can be proposed by one person. One person can be responsible for getting the consent. But that in no way takes away the right of the individual patient to speak to any of the health practitioners on the team about the particular treatment that health practitioner's going to offer.

One would certainly say that good medical practice would dictate that would be the case. However, if we listen to the people who came in front of us, they told us frequently of having things done to them without their ability to ask questions, and this is even more important when we are giving permission for a whole plan of treatment to cover a number of different fields. It is important that, yes, we allow that to happen because we encourage teamwork between professionals, but that should not in any way detract from the ability of a patient to talk to anybody who's going to actually deliver that treatment to them.

We need to protect people since we've given this overall decision-making power. Other professionals cannot necessarily answer the questions a person would have. Even as treatment goes on, there might be an issue around a side-effect of a treatment. There might be an issue around a stiff muscle that could not be answered by the one person chosen by the team to present the plan. It is important to ensure that this doesn't give a signal to health professionals that if they act in a team, then one person gets assigned and the patient has no right to ask questions of anybody else on the team.

Mrs Johns: The government is going to oppose this motion, and the reason we're going to oppose this motion is not that we disagree with anything Mrs Boyd said, but the Health Care Consent Act in no way stops an individual from talking to any of his health practitioners. In effect, if a person is giving consent, they have to understand the treatment as outlined in section 3 and they have to be able to know the foreseeable consequences of that treatment.

They can talk to any practitioner they need to to be able to understand the treatment and its decisions. The Health Care Consent Act, although it suggests that one practitioner can give all the information, does not suggest an individual cannot talk to all of the health practitioners if they so desire.

Mrs Boyd: Then there shouldn't be any problem with passing it since that's the way it is.

Mrs Johns: But it doesn't add anything to the act.

Mrs Boyd: It adds to the confidence people have that indeed this is what this means, and that's what you are facing, the confidence of the vulnerable population in what this actually means for them. I can assure you it will save you a lot of difficulty in terms of apprehension on the part of vulnerable people. Since you say this is the way it is, you simply say that's the way it is in the act.

Mrs Caplan: Rather than having this in the statute, I really think this should be in the procedures in the hospitals. If it's not the practice in the hospitals, then you can request that or do that through regulation under the Public Hospitals Act, if they're not doing it.

My thought is they are. I just don't think it's necessary to put this in the statute. I think people have that right and all hospitals would have that as part of their regular practice. If people don't know they have the right, that's something else, and that's an issue of education. But I don't think putting it in the statute would help with that.

Mrs Boyd: Mrs Caplan continues to be caught in a time warp where she thinks health services are all developed in public hospitals, and they aren't. We're talking about home care, about retirement and rest homes, about nursing homes, about long-term-care facilities of all sorts. The reality is that in those settings there isn't necessarily the kind of protection of procedures of the hospital.

We would like to think that there are, and there are some protections that we insisted be built into the Long-Term Care Act. I don't think this is one of them. If you say this is going to happen, what's wrong with putting it in the statute to assure people they do have the right?

Mrs Caplan: The example Mrs Boyd used was the example of the anaesthetist in surgery in a hospital, which is why I used the hospital environment. But you not only have the Public Hospitals Act, you have the long-term-care legislation, you have the Nursing Homes Act, so that you could, if there was a problem, do it through that legislation. I just don't think it's a problem, is the point I'm making.

There are other remedies, given the regulatory authority under the other acts, but my own view is that it would be in every organization's interest that is doing treatment plans to ensure that people know they have the right to speak to whoever they want to about their treatment. So we're not going to be supporting the amendment.

Mr Tilson: I just want to make sure I understand your amendment. Doesn't someone have the right to get a second opinion? If you don't get information, if I don't have the right to go and speak to somebody else, well, I'm going to withhold my consent.

Mr Marchese: It's not so simple, Mr Tilson.

Mr Tilson: I'm sorry, maybe I don't understand the amendment. That's why I've asked the question. It's as simple as that: If you don't get the information you want or you don't get the right to talk to somebody: "Fine. I'm not giving my consent."

1150

Mrs Boyd: What we are talking about here is vulnerable people who may or may not be capable, so for them we're talking about a series of substitute decision-makers. All we're saying is that if we're going to give permission for health care professionals who act as a team to assign one person to be the person who explains that and gets the consent for that, we have to make sure that doesn't mean that health professionals—that means everybody else on the team—don't have to be available to the patient to ask questions, available to the patient to consult with the patient.

I'll give you the example. I don't whether it's counsel or policy people from long-term care. One of the reasons they did not want rights advice to be given in one area was that it would mean somebody else had to come in and do something. All I'm saying is, we have to be very clear. We're not trying to make this complicated; we're just trying to ensure that the permission to have this team

approach to a treatment plan doesn't mean that once that consent is given, the patient then doesn't have the opportunity to ask questions about the specific parts of the treatment plan and how that affects them or the substitute decision-maker.

Mr Tilson: But no one's going to stop these people from asking for the information in this amendment.

Mrs Boyd: I can tell you quite frankly, Mr Tilson—you say no one will stop them—my concern is that they will be informed, "You've already agreed to this."

The Chair: Thank you, Mrs Boyd. Shall the amendment pass?

Mr Marchese: Recorded vote, please.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: Shall section 12 of the schedule pass as unamended? Carried.

We are proceeding to section 16, which is on 108.

Mrs Johns: I think there was an amendment that was approved in section 12, so I think it's "as amended." We approved the NDP motion 100.

The Chair: Okay. Agreed.

Section 16, on 108, and this is Mrs Boyd's motion.

Mrs Johns: This has been moved already, I believe, and we have had some discussion about it. I went back to have a second look at it because there was an interpretation difference. The government will not be supporting this motion.

Mrs Boyd: I'm not surprised, am I?

Mrs Johns: I don't know if you are or not.

Mrs Boyd: The effect of the motion would have been to ensure that until the board gives a decision in the matter and the appeal period passes without an appeal being commenced, or all the other parties have informed the health practitioner that they do not intend to appeal, or an appeal of the board's decision is finally disposed of, the treatment couldn't commence.

The purpose of the bill was, first of all, to ensure that treatment didn't begin while the appeal period was still going on, but to expedite things if all the parties to the review, to the board, indicated they were not going to appeal. It would have speeded things up, and that appears not to have been a consideration in the decision of the ministry.

Mr Marchese: I am quite ready for the vote. We've had plenty of discussion.

The Chair: Yes. Shall the motion carry?

Mrs Boyd: Recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: The motion is defeated.

Shall section 16, as amended, pass? Carried.

We're proceeding to section 19, which is on 114 of your proposed motions. I believe there are three pages now.

Mrs Johns: I believe the first motion has been read into the record, and the government is going to oppose this motion. We have worked at trying to change wording and we're going to be opposing the motion.

The Chair: You might help us. I think there were three in all, Mrs Boyd. Could you assist us with what is happening?

Mrs Boyd: There were three different versions, I believe, at one point. The version we finally came down to and that we thought we had the agreement of the government to—in fact, it was amended for us a number of times on the part of government members—Mr Parker I think was the last one who suggested amendments. We had every reason to believe that once the wording suited the members of this committee, this amendment would be passed. Apparently instructions have been given that it not be passed.

I will read it as the amended version.

The Chair: Excuse me, Mrs Boyd. I didn't want to interrupt, but we're withdrawing, I take it, the one marked 114.

Mrs Boyd: And replacing it. I was about to read that out, Mr Chair.

I move that section 19 of the Health Care Consent Act, 1995, as set out in schedule A to the bill, be amended by adding the following subsection:

"Disclosure of wishes re withholding or withdrawing treatment

"(3) A person who gives or refuses consent on an incapable person's behalf to a plan of treatment that provides for the withholding or withdrawal of treatment shall disclose to the health practitioner any wishes of which the person is aware that were expressed by the incapable person with respect to the treatment and that are applicable to the circumstances."

The revisions in this were at the behest of the counsel and members of the government. I am very surprised that Mrs Johns is now indicating that the government will not accept the amendment.

The Chair: Shall the motion carry?

Mr Marchese: Recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: The motion is defeated.

Shall section 19 pass? Carried.

We are now moving to section 57, which is on page 157.

Mrs Johns: Mr Chairman, I believe I read the motion into the record before and there was a question that we were talking about with respect to impossible exceptions. It's in subsection 57(1) paragraph 2, "If the person does not know of a wish applicable," and in the fourth line it says "is impossible to comply with." You asked a

question about this, Mrs Boyd, what would be impossible to comply with.

Mrs Boyd: Excuse me, I don't think this is 157.

Mrs Johns: It's 153, I'm sorry.

The Chair: I had the wrong one. Very sorry.

Mrs Johns: We have done some discussions about the impossible exception. I would like to put some of our thoughts into the record. The impossible exception is necessary in the wishes part of the substitute decision-making criteria. A wish may be impossible to honour for a number of reasons. One wish may conflict with another wish. For example, a person wants to stay close to their own home and also has other wishes that the facilities around that area will not meet, so he has conflicting wishes. That's one time where it would be impossible to comply with the wish. A service may cost more than a person can afford.

So the next question I asked was, what if the impossibility exception is applied improperly, if someone has the money and someone doesn't want to spend it, for example? I think that's an important thing that we have to talk about today. The answer we talked about was that a service provider might know that a person, when capable, always wanted to have her hair done once a week and the substitute decision-maker is refusing to agree to this, even though the incapable person has the resources.

The Health Care Consent Act actually provides a way of addressing this. The service provider can propose the service under the act, and if the substitute refuses and is not complying with the criteria of the act, the service provider can apply to the board for a compliance review. The board can therefore potentially require the substitute to decide differently. If the substitute did not follow the board's directions, then the substitute would be deemed unauthorized to make the decision under one of the sections we did that ties back to section 18, if you remember.

There are a couple of things that they want us to remember when we're talking about this section. A substitute can potentially be replaced. Another person can apply to the board to be a representative for ongoing decisions, so that's one thing. If a long-term care facility is unreasonably denying services, there's a formal avenue of complaint at the ministry for that to happen.

The Chair: Thank you, Mrs Johns. The time is up.

Interjection.

The Chair: Okay. Shall the proposed amendment carry? Carried.

I believe there's one other amendment in this section, but it's 12 o'clock.

1200

Mrs Boyd: Could we have all-party consent to finish the Health Care Consent Act so that the staff don't have to come back after lunch?

Mrs Johns: I believe the next amendment is out of order.

Mr Tilson: Mr Chair, just on that point, the only problem is that we also have to deal with the schedules, I think.

Mrs Boyd: Are you changing the order in which we're looking at this again?

Mr Tilson: No, I'm just responding to your comment. I'd love to be able to tell the health people the order.

The Chair: We have two more amendments after this, in any event, on 82.1, that we put down.

Mr Marchese: He's trying to finish his statement.

Mr Tilson: It's not just that, Mr Chairman. It's the amendments to the other pieces of legislation. Could someone help me here.

Mrs Johns: Charitable Institutions Act, the Nursing Homes Act, the Mental Health Act.

Mrs Boyd: They were going to come at the end of the afternoon anyway, unless you're changing that again.

Mr Tilson: Except that we need health for those pieces of legislation.

The Chair: It's going to be a little while. We'd like to finish it. Mr Tilson, you were to report to us regarding a report.

Mr Tilson: Yes, and we're still attempting to get it. I've spoken to Mrs Caplan and we're still attempting to get that information.

The Chair: Thank you, Mr Tilson.

Mrs Caplan: I just want to thank Mr Tilson for his efforts. I appreciate it. Just for the record, the clarification is that it is the Ernst and Young domiciliary hostel review that I have requested. All I want is the executive summary, not the whole report, and I appreciate his efforts.

Mr Tilson: Mr Chair, can we agree, as Mrs Boyd suggests, that we finish the two amendments?

Mrs Caplan: Let's go.

The Chair: Okay. We have it on 155, which I believe is out of order. You have to read it into the record, Mrs Boyd; it has to be read.

Mrs Boyd: It's withdrawn.

The Chair: It's withdrawn. Thank you. We can then pass section 57 as amended. All those in favour? Carried.

We are moving now to 82.1, which is contained on, I believe, 189 and 190 of your books.

Mrs Caplan: I'd move that schedule A to the bill be amended by adding the following section:

"Evaluator's obligation to inform

"82.1 (1) If an evaluator finds, in accordance with this act, that a person is incapable with respect to admission to a care facility or with respect to a personal assistance service, the evaluator shall inform the person of his or her rights with respect to the finding, including any rights to apply to the board for a review of the finding,

"(a) as required by the guidelines established by the evaluator's college, if he or she is a member of a college referred to in clause (a), (l), (m), (o), (p) or (q) of the definition of 'health practitioner' in subsection 2(1); or

"(b) in accordance with regulations, otherwise.

"Duty of the colleges

"(2) For the purpose of subsection (1), each of the colleges referred to in clauses (a), (l), (m), (o), (p) or (q) of the definition of 'health practitioner' in subsection 2(1) shall establish and publish guidelines governing the responsibilities of its members under subsection (1)."

This is the last opportunity in the legislation to put something in the statute, and this is very confined and defined. It deals only with two things: (1) the admission to a care facility, and (2) the provision of a personal service.

What this says is that an evaluator, under this act, has an obligation to inform a person who is incapable that they have been found incapable for the intention of putting them into a long-term-care facility as well as for the purposes of deciding what personal services will be provided to them.

It says that it is the colleges that will decide how that is done unless you decide by regulation that someone else or some other group can be evaluators, in which case the government will establish the protocol for that communication so that you do not get into a kind of formal Mirandizing, but into the fostering of a conversation.

I hope that the government will accept this. I recognize that we dealt with it under the provision of treatment and that you decided not to do it for treatment. I respectfully suggest that it is extremely important for the purposes of admission to a facility and for the delivery of personal services. You're now dealing primarily with disabled persons and elderly persons. I think that it's respectful to them that that communication take place, that it be an obligation of the evaluators to do it.

We are not prescribing or suggesting that you prescribe. Where there is a college, the college should do it. Where there is no college, I think the government has a responsibility and the legislative duty by regulation to do that for all of the evaluators they have prescribed who are not members of colleges.

It's my last gasp, my hope that you will put an obligation in this legislation.

Mr Tilson: I doubt that's your last gasp.

Mrs Caplan: It is definitely my last gasp on this issue, Mr Tilson. I'm hoping you have been convinced that it is a reasonable request.

Mr Marchese: We've had a strong impact.

The Chair: As there are no further comments, shall the motion pass? Recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Guzzo, Doyle, Johns, Leadston, Parker, Tilson.

The Chair: The motion is defeated. We shall now proceed to the third party's motion contained on page 190.

Mrs Boyd: Mr Chair, that's a consequent motion to the one that did not pass, and it is withdrawn.

The Chair: I now put the question. Shall schedule A, as amended, carry? Carried.

I thank you very much. After lunch, at 1 o'clock—

Mrs Johns: Is that part II in Bill 19 also?

The Chair: We're proceeding to section 2 of Bill 19 after lunch.

Mrs Johns: I just want to approve part II in Bill 19, which we've just dealt with, which is the Health Care Consent Act section.

Mrs Caplan: Part II. That's the next question.

The Chair: Yes.

Mrs Johns: Of Bill 19, not of the Health Care Consent Act. Page 2.

The Chair: That will be the next question. Carried? Done. Yes, Mr Tilson? You're cutting into my lunch hour now.

Mr Tilson: Indeed. The staff from the Ministry of Health have requested that we make it quite clear that immediately after the lunch recess we would be dealing with the substitute decisions part of the bill and that the related bills would come after that, so they don't have to be here, I suppose.

The Chair: That's the order of the bill, Mr Tilson.

The committee recessed from 1208 to 1305.

The Chair: I call the committee to order. I apologize, but I neglected to put before the committee schedule A, sections 84 to 93, inclusive, which had no amendments. Shall those sections pass? Carried.

We are now proceeding to section 3, the Substitute Decisions Act, and our first amendment is one by the opposition.

Mrs Caplan: I move that section 3 of the bill be amended by adding the following subsection:

"(1.1) The definition of 'assessor' in subsection 1(1) of the Substitute Decisions Act, 1992, is amended by inserting 'who have been trained and certified by the capacity assessment office and' after 'persons' in the first and second lines."

The intention of this amendment is to ensure that all assessors are and will be forever and a day trained by the capacity assessment office. It's relatively new. It's not in statute. It is the practice today, and I think by putting it in the statute we will ensure that we will have those standards and consistency. One of the fears I have is that as you start looking for places to cut back, you might pick on something like this. It would be a tragedy if that happened, because I think it is important to have that consistency and those standards and that training and I support the work of the capacity assessment office and I don't know anywhere else in statute where it is protected. That's the purpose of the amendment, which I'm sure the government will support, because it's so reasonable and they're doing it anyway.

Mr Tilson: The current regulations were put in by the former New Democratic government. I think all three parties supported that proposal which uses the regulations to—they didn't want to eliminate future possibilities for self-governance. The regulations still stand. Just to read some of them, regulation 29/95 under the Substitute Decisions Act of 1992:

"1. To be qualified as an assessor, a person must,

"(a) have successfully completed the training course for assessors given by the Attorney General;

"(b) have agreed to take part in ongoing training and evaluation with respect to assessments of capacity;...

"2. The training course referred to in clause 1(a) must include,

"(a) instruction in the Substitute Decisions Act, the Advocacy Act, 1992, the Consent to Treatment Act, 1992;"—in other words, the three pieces of legislation the former government passed—

"(b) instruction in the code of ethics and standards of conduct for assessors;

"(c) instruction in the policies and procedures for the conduct of assessments of capacity;

"(d) instruction in the policies and procedures established for determining if a person needs decisions to be made on his or her behalf by a person authorized to do so;

"(e) practical training in real or simulated assessments of capacity;

"(f) an evaluation of the knowledge, skills and ability of the person doing...and at the conclusion of the training course."

There's no question that the current regulations establish the designation process. The government doesn't believe there's any reason, notwithstanding what Mrs Caplan says—we may simply have a difference in philosophy, but we simply don't believe there's any reason to change that. You have made no submissions that point out the necessity for this, and we don't think it would be necessary at this particular time to entrench one particular form of supervision in the statute at this early stage of the development of the capacity assessment process.

The regulations are under review. We will address the training in the regulations if we intend to change them, but currently we believe the process, for the intent of your motion, is adequate.

Mrs Boyd: Mr Tilson has just told us that regulations are under review. We've had a lot of talk this morning about regulations being made behind closed doors and sprung on the population by the government in power. There is no way that people in this province have any kind of confidence that the government will not do what it has done in many other cases: simply do away with regulations because they were passed by the previous government. You have done that in many cases, and it would give some comfort to those who have expressed real concerns around the training issue to have this in legislation.

As you will see, we have a motion that does not limit that to the consent board, and I hope we will discuss why we did that later, because we think it gives more freedom. The real issue is making sure that people are trained and certified, making sure people can have some confidence that those doing these very sensitive tasks will have the requisite training and information that enables them to do it in a sensitive and appropriate way.

Mrs Caplan: Can I have the assurance of the parliamentary assistant that it is not the intention of the government to remove from the capacity assessment office the responsibility for training?

Mr Tilson: I can only say that the current regulations stand. We're continuing to try to improve the process, as the previous government did. Both the Liberal Party and the Conservative Party agreed with what the NDP did with this process. We think it's workable and we intend to continue with that. Quite frankly, in either of your submissions, I haven't heard anything to change our mind as to why we should stop the process started by the former government.

Mrs Caplan: The only concern I have is that so much can be done by regulation and those changes can be made, and something is working well. I'm pleased you support it and I hope it will continue. I would have some comfort if you'd just assure us that your support will be ongoing. If I had that assurance, I'd withdraw the amend-

ment. If I don't have the assurance, at least we'll have a vote on the amendment, which will signify that we think the capacity office is working well and that is the appropriate place to train and certify.

Mr Tilson: I can't add anything more, Mr Chairman.

The Chair: Shall the amendment carry?

Mrs Boyd: Recorded vote, please.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître.

Nays

Doyle, Guzzo, Johns, Leadston, Tilson.

The Chair: It's defeated. We shall proceed to the next motion, on page 4.

Mrs Boyd: I move that section 3 of the bill be amended by adding the following subsection:

"(1.1) The definition of 'assessor' in subsection 1(1) of the act is amended by inserting 'and who have successfully completed the prescribed courses of training' after 'capacity' in the last line."

The purpose is similar to the purpose of the Liberal amendment: to ensure there is training available to these people, that we will not have people making these assessments without the prescribed training, and that there is a standard set up for that. We have not said by whom, because we appreciate that over time there may be other ways in which this training occurs, but we have said it is important in legislation to specify that no one will be doing these assessments unless they have completed the training prescribed by the regulations.

I think it's a very permissive action. I would hope the government would support it, since clearly their intention is to provide training. I can understand why they're not prepared to commit themselves to training by a particular body, which may over time change in its function, but the intention is that assessors be trained and have the confidence of the population, particularly the vulnerable population, that no one will be assessed under this act unless it is by a trained professional assessor.

Mr Tilson: My comments are similar to the last comments I made. Mrs Boyd is supporting some of the positions we're taking, and I would thank her for that. We aren't changing the regulation authority which addresses training, clause 90(d) of the Substitute Decisions Act. We will say that we are committing to training being addressed in future regulations, and we're making no further commitments. We have started the consultation process and we will consult further on this issue, and there are no additional commitments with respect to that.

Mrs Boyd: Mr Chair, the government has refused in every instance to agree that evaluators need to be trained, that that's a special task; has refused all the educational and training amendments that have been brought forward to reassure all those who came in front of this committee who said they did not necessarily trust that this job would be carried out in the way it should be carried out unless people had specific training, both in the law as it stands and also in the way it is carried out.

I find it incredible that yet again we find the government saying: "Oh, trust us, trust us. We do have regulat-

ing power. We have the regulations under review, but trust us that we will provide this kind of training under those regulations, once we've reviewed them."

I don't think it is reasonable for this government to expect that from the vulnerable population out there, who have seen rights advice removed, who have seen all the requirements around being informed about their right to appeal removed, all the protective things they suggested to this committee taken out of this act, and who of course no longer have official advocates to argue on their behalf when they believe they have been treated badly under this act. It's very unconvincing to me and I suspect it's very unconvincing to the people who are most likely to be affected, those who may be declared incapable by an assessor.

Mrs Caplan: I would like to let people who are watching know what this is about. An assessor has the ability to decide that someone is not capable, not just for the purpose of a treatment, as under the Health Care Consent Act where an evaluator can do that for one treatment. This is to remove all rights and to impose a guardianship agreement for that person. That is very significant. All this request says is, "Let's make sure that those people who will have enormous power over people's lives in this province are properly trained." Mr Tilson and the government say: "Trust us. We'll do it all by regulation." Frankly, I don't trust you. I don't think the people trust to have everything done by regs when you've refused to allow any scrutiny of those regs, when over and over again very reasonable amendments have been placed that wouldn't cost a nickel, that would have put in place in statute some of those things that would have given some comfort.

We're going to be supporting this amendment simply because we think legislative protection is a reasonable request on something as important as the training and qualifications for those people who are given authority to place a person's life in the hands of someone else under guardianship. That's what this is about.

Mr Tilson: I'm sorry you don't trust me, Mrs Caplan.

Mrs Caplan: Not you personally—the government, any government.

Mr Tilson: To Mrs Boyd, I think Mr Hampton was the Attorney General when the bill was passed and I think you were the Attorney General when the regulations were put forward, so you have extensive knowledge about that. I will add that our act goes further. It adds the authority to prescribe standards, which wasn't there before. We even go further than you did.

1320

You and Mrs Caplan both take great delight in talking about consultation. There doesn't seem to be anywhere in the research summary on presenters that Mr Marchese loves to flaunt around that we see this amendment being proposed. My question to you and to Mrs Caplan is, what are you responding to, particularly when philosophically both of you agreed to it in the last government? Are you changing your mind?

The Chair: I don't think it's a proper question, but Mrs Caplan, it's up to you.

Mrs Caplan: Yes, it is. I'm happy to respond to that. We heard over and over again from people who came

forward the request for proper training. We heard over and over again—

Mr Tilson: No, no. We're talking about putting it into the statute as opposed to leaving it in the regulations. No one said that. In fact, some said the contrary.

Mrs Caplan: The people who came forward requesting an assurance that people would be properly trained, and I listened to them, I believe would have more comfort if the obligation was in the statute as opposed to the reg. That's the basis of my support. It's just a question of whether you are satisfied to leave it in regs. My preference at this time would be to have it in the statutes. It's that simple.

Mrs Boyd: Mr Tilson, of course, again tells us this wasn't presented by anybody. I'll give you one example, the Toronto Mayor's Committee on Aging, that said, "We also recommend that people who assess capacity be trained in university and by their hospitals and professional colleges for this role and that appropriate standards be established for these assessments."

Mr Tilson: We agree. We're doing that.

Mrs Boyd: You're doing it by regulation. You rightly point out that when I was Attorney General, we supported the regulation that made this necessary. I personally believe and believed then that it should have been in the legislation so it was clearly there that this is a function that requires specific training. We put it in the regulation because the legislation was already passed. It was passed in 1992. We put it in the regulations to make sure, because between 1992 and the time the act came into effect on April 3, 1995, we heard from many people, "You haven't provided for the training of these people who have power over individuals that is second to none."

The thing you have to understand about this act is that the power of guardianship is an enormously important power, whether it's guardian of the person or guardian of property or both. It is extremely important for you to understand the apprehension, particularly of those who at one time or another in their lives may have been deemed to be incapable, to say, "The person who does this needs to have training, and we cannot trust that successive governments"—we're not just talking about your government. I can't imagine that these acts are going to be touched again in very short order. If it isn't in the act, there can't be any assurance that it's going to happen.

I've done it in a permissive way that enables your government or any successive government to change that according to the changes in functioning that might occur. I haven't tied you down to offering it by one place. You might come to a point where you want to have a college of assessors. You might do that, and I have left that available to you.

But the reality is, people need the assurance that these are going to be trained people, that this isn't going to be somebody who is able to exercise the power of life and death over them and their property without having some training. If that's your intention, why not put it in the act? What is your problem? Here we are again with another very simple change that would give a lot of comfort to a lot of vulnerable people. The government says, "We're going to do that anyway, but we won't put it in the act so we're required to."

The Chair: If there are no other comments, I'll put the question.

Mrs Boyd: Recorded vote, Mr Chair.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître.

Nays

Doyle, Guzzo, Johns, Leadston, Parker, Tilson.

The Chair: The motion is defeated. The next motion is on page 5.

Mrs Boyd: I move that section 3 of the bill be amended by adding the following subsections:

"(4.1) The definition of 'spouse' in subsection 1(1) of the act is amended by inserting 'subject to subsection (1.1)' after 'means' in the first line.

"(4.2) Section 1 of the act is amended by adding the following subsection:

"Spouses

"(1.1) Two persons are not spouses for the purpose of this act if they are living separate and apart within the meaning of the Divorce Act (Canada)."

The reasoning for this: We will find that this amendment has been proposed by the government in other sections, and we believe it should be made in this section as well.

Mr Tilson: This presentation was made by Mrs Boyd with respect to earlier amendments with respect to the treatment decisions. We note that your amendment excludes relatives by marriage.

Mrs Boyd: Excuse me, it's a different issue. You have amendments throughout your act saying that "spouse" under this act does not include someone who is separate and apart under the Divorce Act. You just missed a section, and we're just putting it in.

Mr Tilson: That isn't how I read it. We're on page 5? Then I'm going to continue that my interpretation is correct. This motion would affect several different sections and procedures under the Substitute Decisions Act. For example, Mrs Boyd's proposal would prohibit a separated spouse from ever, under any circumstances, being considered as a replacement for the PGT as a statutory guardian. You're frowning, but that's what it says. You're looking very bewilderedly, but that's what your section says. If you want to withdraw it—

Mrs Boyd: I do not wish to withdraw it. Would you look at your amendment 12? You just missed a section.

Mr Tilson: I'm simply saying, Mrs Boyd, that we don't think an outright prohibition on such applications is warranted as you're doing with respect to your amendment. The government opposes your amendment.

The Chair: If there are no further comments, shall the amendment carry?

Mrs Boyd: A recorded vote.

Ayes

Boyd.

Nays

Michael Brown, Caplan, Doyle, Grandmaître, Guzzo, Johns, Leadston, Parker, Tilson.

The Chair: Mrs Boyd, your next amendment is on page 6, I believe.

Mrs Boyd: I move that section 3 of the bill be amended by adding the following subsection:

“(4.1.1) Subsection 1(1) of the act is amended by adding the following definition:

“‘will’ has the same meaning as in the Succession Law Reform Act.”

The rationale behind this proposal is that we heard from a number of lawyers their concern that the definition of “will” did not include a lot of other items that very often accompany wills. I’ll quote from the submission that was made.

Mr Tilson: We agree with you.

The Chair: The government agrees. Is there any further comment? Shall the amendment carry? Carried.

The next amendment is on page 7.

Mrs Boyd: This is the amendment that Mr Tilson confused with our previous amendment, subsection 3(5) of the bill, subsection 1(2.1) of the Substitute Decisions Act, 1992.

I move that subsection 1(2.1) of the Substitute Decisions Act, 1992, as set out in subsection 3(5) of the bill, be amended by striking out ‘blood, marriage or adoption’ in the last line and substituting ‘blood or adoption’.

The rationale is the same as it was in the Health Care Consent Act. We heard many people say they thought that left it very vague, that there were people who could apply under this section who were very distant. Particularly where that hierarchy is in place, that did not give people much comfort.

Mr Tilson: We oppose the amendment for the same reasons as before. We believe this amendment excludes all relatives by marriage from some significant opportunities in the act, and we don’t feel that would be appropriate. To use Mrs Johns’s words, this is the 1990s, and relatives through marriage certainly can make a contribution valid contribution to the family unit. We believe, in our party at least, that the PGT should be used as a last resort and that there are others who could get involved in the process. We don’t see why, for example, a daughter-in-law should be prohibited, even from being considered at least, as a statutory guardian of property to replace the OPT. We submit this approach as simply too rigid.

1330

Mrs Caplan: While I share the concern that some long-lost relative might appear, I do believe that could be resolved by an amendment we have further on that requires the test of a relationship within 12 months, so we will not be supporting this.

The Chair: If there’s no other comment, shall the amendment pass? All those in favour? All those opposed? The motion is defeated.

Shall section 3 pass, as amended?

Mrs Caplan: It’s 3, 4 and 5.

The Chair: The other two are unamended so I’ll treat them differently. Three? Carried. And sections 4 and 5, as unamended? Carried. You’re way ahead of me, Mrs Caplan.

Section 6. There’s a proposed amendment by the government to subsection 6(2).

Mr Tilson: I would move that subsection 6(2)—

Mrs Caplan: We’ll give unanimous consent. We have the same amendment.

The Chair: Read it into the record, Mr Tilson.

Mr Tilson: I’m glad to see your support. The Liberals and Conservatives are agreeing on something.

I move that subsection 6(2) of the bill be struck out.

We’ve heard the concerns of people, especially those who practise in this field, seeing the problems associated with the execution of powers of attorney. We’d like to quote from one of the submissions of—

Mrs Caplan: We agree.

Mr Tilson: Does everybody agree? If everybody agrees, I will stop, Mr Chairman.

The Chair: Shall the amendment carry?

Mrs Caplan: I’d like to withdraw the next one, because it is identical, but I think it just should be pointed out that the effect of this is that children cannot be witnesses to powers of attorney. That was a concern expressed by many. It’s a concern we had and we spoke to that. I’m satisfied that this amendment will mean that children who may have an interest—and we have seen abuses around coercion and so forth—will not be able to act as a witness to powers of attorney, and we think that’s appropriate.

Mr Tilson: Notwithstanding the agreement, I would for the record like to put forward the submission of one of the delegates, people by the name of Laidlaw.

The Chair: I’m calling the question, Mr Tilson. We’re all in agreement. It’s unanimous.

Mr Tilson: Well, Mr Chairman, I’ve sat here and listened to the—

Mrs Caplan: Why do you want to delay these hearings?

The Chair: Mr Tilson, we rarely obtain unanimous agreement at this table and at this place. I think we should celebrate it rather than prolong it.

Mr Tilson: By overwhelming demand, I will not read it into the record.

The Chair: All those in favour? Carried.

We are now moving to page 10, Mrs Boyd.

Mrs Caplan: We’re withdrawing 9.

The Chair: Well, it was never made.

Mrs Boyd: I move that section 6 of the bill be struck out and the following substituted:

“6. Subsection 10(3) of the act is repealed and the following substituted:

“Execution by witnesses

“(3) Each witness shall sign the power of attorney as witness, if the witness has reasonable grounds to believe that the grantor is capable of giving a continuing power of attorney.”

We had presentations by the following groups and individuals: the Toronto Mayor’s Committee on Aging, the Psychiatric Patient Advocate Office, the Ontario Association of Professional Social Workers, the Advocacy Centre for the Elderly, the London Battered Women’s Advocacy Centre, the Adult Protective Services Association, Legal Assistance of Windsor, the Alzheimer Society of Ottawa-Carleton and the Lanark law association, all of whom really urged us to recognize the need to ensure that people have reason to believe that people are capable.

It's really important for us to keep in mind that this is a very important and sensitive issue around people's confidence, that they will not be taken advantage of and that no one will witness a power of attorney if they are not capable of giving it, and it certainly was mentioned by a lot of people.

Mrs Caplan: We've given this one a lot of thought and the concern I have I think is the concern that the legal secretaries who were called in to witness expressed when they came before the committee and that was, when you witness a signature, you witness and signature, and that's it. It's over and it's done with. The suggestion that when you witness a signature you are in some way having to make a judgement about capacity, when you may not have even been in the room for the discussion, you don't know the person—I think it's an unfair responsibility to place on someone who is being called in for the purpose of witnessing a signature.

While I share the concerns of all of those who came forward to make the argument that says you should have reasonable grounds to assume capacity, we're not going to support this amendment. We believe that it is unfair to place people in the position where they may later have to testify that they had reason to believe that the person was competent, without having had any process or competence in the area of capacity.

The concern that I have is the use of the term "reasonable grounds," which I think in law has a fairly strong test to it. So we've struggled with this because we're sensitive to the issue and we think that there should be a way of addressing it, but we don't think it's fair to place people who are coming to witness a signature in that position of responsibility.

Mr Tilson: The government agrees 100% with what Mrs Caplan just said. Surprise. The difficulty I see with this amendment is that you're going to have a lot of trouble getting people to witness these documents. When you ask them to warrant something, word will get out that they could be holding themselves out to something they can't do and they could end up being liable, and the work simply won't get done.

Two expert estate lawyers from private practice came to the committee, Hilary Laidlaw and Paul Milne. I'll just refer briefly to Hilary Laidlaw's submission; they both say essentially the same thing:

"I support the repeal of the witness attestation requirements for both powers of attorney for property and powers of attorney for personal care, as set out in subsections 10(3) and 48(3) of the Substitute Decisions Act. These provisions have been interpreted by many to require that a witness satisfy himself or herself as to the capacity of the grantor to give the power of attorney, as it is not clear from the wording of the provision that the mere absence of any belief to the contrary is sufficient." This is the main part, Mrs Boyd: "Few witnesses are prepared, or indeed qualified, to make such an assessment. As a result, it can often be difficult to find witnesses for a power of attorney because of the possibility of their being drawn into litigation if the grantor's capacity is ever put in issue," and she continues. You all have this and I won't proceed. But Mrs Caplan said it very ably and the government agrees with her submissions.

Mrs Boyd: Just as many of the legal people came forward to say that in fact they thought it needed to be an attestation similar to that of a will, and the government also rejected that. We can understand that in the sense that that then really does away with part of the reason to try and make this as user-friendly as possible so that people could fill out their own powers of attorney, get them witnessed and have them, without having to rely on a lawyer, and I agree with that position.

I personally think this issue around finding it difficult to find witnesses is a red herring. I have witnessed powers of attorney. I have had my own witnessed. I have been involved in a number of cases where people have had it witnessed. There was never any question about this. What we are talking about is a certain level of preciousness here. I would think that if a witness were anxious about that, they would be anxious about that because they had some reason to wonder whether or not the person was incapable. That's the only reason you would wonder. If you're anxious about it, you're worried that in fact somebody might not be capable. I find it extremely difficult to take very seriously that argument at all.

1340

Mrs Caplan: I tested this out. On one occasion I was in a place where power of attorney was being drafted and people witnessed and it was a requirement under the old act that you satisfy this test. This actually replaces what exists today. After, I said to them, "So, did you think about this requirement before you witnessed it?" The answer was, "No."

I don't think that people who come to witness a signature or a document like this think about or have thought about that provision. They just signed it because most witnesses are witnessing signature. I don't think that was a thought process they went through. As much as you would like to think that it happened, I don't believe it was happening, and I believe to be held responsible later for something like that is just not achieving the purpose that you want to achieve anyway.

The Chair: Shall the amendment carry? All those opposed? It is defeated.

Shall section 6 carry, as amended? Carried.

Moving on to section 7, there are two government amendments.

Mr Tilson: This is page 11 of the papers.

I move that clause 11(d) of the Substitute Decisions Act, 1992, as set out in subsection 7(1) of the bill, be amended by striking out the portion before subclause (i) and substituting the following:

"(d) unless the power of attorney provides otherwise, the grantor's spouse or partner and the relatives of the grantor who are known to the attorney and reside in Ontario, if,"

In reviewing the bill, and noting the comments of the Advocacy Centre for the Elderly and the Canadian Bar Association about the scope of the term "relative," we re-examined clause 11(d), which speaks to who an attorney has to notify if he or she resigns, and we thought about two things: One, should an attorney have to notify relatives all over the world, whether they be in Europe or China? Is that reasonable? We thought not. It is too onerous and may in some cases simply be outright silly.

So we are limiting the group that's to be notified of the relatives living in the province of Ontario.

Mrs Caplan: Agreed.

Mr Tilson: If we have agreement, I'll stop.

Mrs Boyd: Of course.

Mr Tilson: You agree.

Mrs Boyd: Of course. I wanted it strengthened earlier.

Mr Tilson: Please say so.

The Chair: The motion is carried. Please move to the next amendment, on page 12. Mr Tilson, could we have the next motion please.

Mr Tilson: Yes, Mr Chairman. I move that section 7 of the bill be amended by adding the following subsection:

(1.1) Section 11 of the act is amended by adding the following subsection:

"Exception

"(1.1) Clause (1)(d) does not require a copy of the resignation to be delivered to,

"(a) the grantor's spouse, if the grantor and the spouse are living separate and apart and within the meaning of the Divorce Act (Canada); or

"(b) a relative of the grantor, if the grantor and the relative are related only by marriage and the grantor and his or her spouse are living separate and apart within the meaning of the Divorce Act (Canada)."

Mrs Caplan: Agreed.

The Chair: Is there any opposition to the motion, as put forward by the government? It is carried.

Shall section 7, as amended, carry? Carried.

We're moving on to sections 8 and 9. Shall those sections carry? Carried.

Section 10, Mr Tilson, we have an amendment.

Mr Tilson: I would move that subsection 16(2) of the Substitute Decisions Act, 1992, as set out in section 10 of the bill, be amended by striking out the portion before clause (a) and substituting the following:

"Form of request

"(2) No assessment shall be performed unless the request is in the prescribed form and, if the request is made in respect of another person, the request states that,"

Mrs Caplan: Agreed.

The Chair: Agreed? Is there no objection? It is carried.

Moving on to the next motion, Mrs Boyd, on page 14.

Mrs Boyd: I move that subsection 16(6) of the Substitute Decisions Act, 1992, as set out in section 10 of the bill, be struck out and the following substituted:

"Rights advice

"(6) If a certificate of incapacity is issued under subsection (3), a person designated by a non-profit corporation established for the purpose of providing rights advice under this act shall,

"(a) explain to the grantor the significance of the finding of incapacity and the right to apply to the Consent and Capacity Board for a review of the finding; and

"(b) if requested, assist the grantor in obtaining representation for the purpose of an application to the Consent and Capacity Board."

This is the same issue about rights advice, the same issue that we had in the Health Care Consent Act. It is

very, very important that the government understand the seriousness of what it is doing by not providing for people to be informed when they have been found incapacitated and for not being informed of their right to appeal that finding.

The overwhelming number of representations in front of this committee stressed the importance of that, both under the Health Care Consent Act and under this act, and we urge the government to rethink its refusal to ensure that incapacitated people have the option of appeal.

The Chair: We've explored this issue at length. Is there any other comment? If not, I'll—

Mrs Caplan: I would just like to get on the record, we supported, because there was no other alternative before us, the establishment of the not-for-profit model, as suggested by some of the presentations that came here. However, there is no not-for-profit model in existence and it's only a technicality that this motion is in order. We felt it was out of order, because how can you require something from an entity that isn't? So we can't support this, only because we don't think it makes any sense to require something from an entity that does not exist. If it exists in the future, it would be reasonable to amend the legislation, but it's not reasonable, in our view, to put a requirement in here that can't be carried out.

Mr Tilson: Mrs Johns has thoroughly debated this issue with you, Mrs Boyd, and I won't add to that. We simply don't agree that the only effective way of informing people is hiring third-party people to come into the process.

The Chair: Shall the motion carry? Those in favour? Those against? The motion is defeated.

Mrs Boyd, you have an alternative motion?

Mrs Boyd: I do, Mr Chair, but I don't believe it's worded appropriately. It should have said, as the one that we did under the Health Care Consent Act, "someone who is in a psychiatric facility," and it does not.

The Chair: Are you withdrawing it?

Mrs Boyd: Yes.

The Chair: You just won't bring it. Okay.

Shall section 10, as amended, carry? All those in favour? Carried.

We are moving to section 11, Mrs Caplan, on page 17, I assume.

Mrs Caplan: Yes. I move that section 17 of the Substitute Decisions Act—is it 16?

The Chair: Yes, 16, sorry.

Mrs Caplan: Have we got the wrong number on ours? Oh, page 16. It is page 16.

I move that section 17 of the Substitute Decisions Act, 1992, as set out in section 1 of the bill, be amended by adding the following subsection:

"Statement

"(2.1) An application by any of the persons referred to in paragraphs 1, 2 or 3 of subsection (1) shall contain a statement by the applicant indicating that he or she has been in personal contact with the incapable person during the preceding 12-month period, that their relationship is friendly and that the applicant is willing to perform all duties with respect to the incapable person's property."

1350

The intent of this is to deal with that issue of relationship by marriage or any other, frankly. A few minutes ago, we dealt with an amendment to try and remove the notion of marriage because it might be such a far distant relationship as to be a farce. We believe that in-laws and other relatives may well be the right choice and have the best interests of the incapable person and it's appropriate that they be selected in that hierarchy. However, before anyone is selected, we think there should be a test of reasonableness as to the relationship.

We think this is a very simple amendment. We hope the government will support it, because I think it would give comfort to people who are about to be placed in guardianship to know that someone cannot come forward to be named a guardian who doesn't meet this test.

Now, I know that the government will say the courts make these decisions and that they take all these things into consideration. However, I think that it would give comfort if it was in the statute as direction to the courts as they went looking for who should be the guardian.

And I wouldn't accept the argument that says, well, if they had a relationship where they haven't seen each other or spoken to each other or had contact, the court would want the discretion or the flexibility to be able to do that ahead of the public guardian and trustee, because that's the concern that I have. I believe that you've got to be able to prove you have a relationship with a person, and if you haven't had as much as a phone call or a Christmas card or a birthday card or some kind of contact in a year, then I think that the courts should not be able to appoint you their guardian. I'd rather that people have that kind of protection, rather than some long-lost relative showing up, attesting to love and affection and convincing the courts that they should be the guardian.

This is a very serious amendment and I hope the government's going to support it.

The Chair: Mr Tilson, is the government able to support this motion?

Mr Tilson: No, it's not, Mr Chairman. I assume the committee members have referred to the current form that exists now, and we will be changing that to deal with the issue of financial institutions being added, but we certainly won't be changing that portion which has the required information that you're speaking of.

We believe that this amendment is simply going to complicate things further. We don't disagree that this is an important issue to consider, an application to replace the official guardian when the applicant is an individual and not a financial institution, but we don't think it's necessary to have this in the statute when you've got the form. The current form, the current application, which is the form, requires that this statement be in there. At this stage, we will undertake to keep this statement in the prescribed form, the statement that is of concern to you.

Section 89, I might also draw to the committee members' attention, of the Substitute Decisions Act, if you would refer to that, makes it an offense to make a false statement in the prescribed form. So I think, to both members of the opposition, that your concerns are adequately addressed and that the amendment would be inappropriate.

Mrs Caplan: I'm not going to prolong the debate on it. I'm disappointed at the government that they will not support it. Again, the reason for it is because they claim they're doing it already in a form which can be changed by reg, and while he undertakes that they have no intention of changing that—

Mr Tilson: We have not, no.

Mrs Caplan: —in the foreseeable future, that doesn't give the confidence that having it in the statute would give. On this one, I trust that you're not going to make that change and you've given that undertaking and I appreciate that, but I believe that people would have greater comfort if they knew that forever and a day it was in the statute and that before the form could be changed in the future by some future government, it would require legislative action rather than a change in regulation or a change in the development of a form.

That's all I have to say. Let's vote.

Mrs Boyd: We had many people come in front of us who wanted this restored, who felt it was very serious. I'll only read one of those presentations, from ARCH, the legal advocacy group for disabled people:

"Paragraph 17(1)2 allows a relative to apply to replace the PGT as an incapable person's statutory guardian of property. Since the definition of relative in the proposed subsection (2.1) of the act is so broad (anyone related by blood, adoption or marriage) there appears to be no limit on what family ties will be recognized and there is nothing in the act allowing the vulnerable person to challenge the appointment of a particular relative. These provisions could violate a person's right to life, liberty and security of the person as set out in section 7 of the Canadian Charter of Rights and Freedoms."

Had the government accepted the previous motion that we put forward that would not have allowed distant relatives by marriage, we wouldn't be as concerned about this. But we heard people talking about how concerned they were about how wide open this is. We need to remember that this is a statutory guardian situation. It's a very serious matter. The person could come in and have full control over a person's property, and indeed over their entire life, and it is not appropriate for the government not to safeguard vulnerable people against the enormity of having someone who knows nothing about them, knows nothing about their wishes, knows nothing about the course of their life, to even have that as a possibility for someone to have this kind of power over another person. It's unconscionable, and I hope the government will remember the number of people who came in front of us saying how concerned they were about this and how inappropriate this was.

The Chair: Shall the motion pass?

Mrs Boyd: Recorded vote.

Ayes

Boyd, Michael Brown, Caplan.

Nays

Guzzo, Johns, Klees, Parker, Tilson.

The Chair: The motion is defeated. Shall sections 11 and 12 pass? Carried. Section 13.

Mrs Caplan: We found an alternative motion, and I will read it into the record.

I move that subsection 24(2.1) of the Substitute Decisions Act, 1992, as set out in subsection 14(3) of the bill, be struck out and the following substituted:

"Same

"(2.1) Subsection (1) does not apply to a person if,

"(a) the compensation received by the person for providing the health care or the services is not received from the incapable person; and

"(b) the court is satisfied that there is no other suitable person who is available and willing to be appointed."

Can I speak to this?

Mr Tilson: Mr Chairman, I need somebody to help me. I'm lost as to which—

Interjection: Page 17.

Mr Tilson: I have that, but I don't think that's what she's reading.

Interjection: She's reading page 17a.

Mr Tilson: I don't have 17a.

Interjection: So she skipped the 17th?

Mrs Caplan: We dealt with 17. Oh, I apologize. I skipped that one as I was flipping the pages.

The Chair: Does everybody have 17a?

Mrs Caplan: I apologize, Mr Chairman. The page flipped. Section 13 of the bill. That's where we are, correct?

I move that section 19 of the Substitute Decisions Act, 1992, as set out in section 13 of the bill, be amended by adding the following subsection:

"Same

"(1.1) If he or she is satisfied that it is necessary to do so in order to prevent harm, the public guardian and trustee shall act as guardian of property for an incapable person."

I think this is clear. It requires an intention to protect from harm. The concern is that without that in place, you may have precipitous action taken when there is no harm. We felt that the actions of the public guardian and trustee should be fettered and that tying it to having to justify that they are taking over someone's life is because there is a risk of harm.

The notion of harm is very clear in the Mental Health Act. A person can be detained if they are of harm to themselves or to another person, ie, society. Therefore, we felt it was reasonable to introduce the notion of harm into the substitute decision legislation. Since we all agree that we want the office of the public guardian and trustee to act as a last resort, we believe that the notion of harm before they can take action is appropriate.

1400

Mrs Boyd: I think all of us have expressed a desire to have the public guardian and trustee be the last resort, and I believe that the government's motion is premised on that, that the act as it is is premised on the notion that the public guardian and trustee would only elect—because the section says that they may elect to become the incapable person's statutory guardian. I would think they would only do that if they felt it were necessary. I'm not sure that it's only harm. It may be that the person who they might want to come along afterwards—because

it does say until another person is appointed as guardian of property.

Say, for example, my brother were to be my guardian of property and he were the next in the hierarchy but at the moment, or for about three months, he's in Malaysia, say. This would enable the public guardian and trustee to take on the task until that guardian could be appointed. I might not be under any threat of serious harm, or my property might not be under any threat of serious harm, but it would still be important for the public guardian and trustee to be able to make that decision. I think the way it's worded they are only doing that until another guardian could be appointed. So I don't think the necessary harm is the only test. There may be other reasons.

Mr Tilson: This is in the old legislation and we took it out—

Mrs Boyd: That's right, as the last resort.

Mr Tilson: —and we consciously took it out. We took it out because we felt it was vague and redundant. If you look at section 27, it already requires the public guardian and trustee to get involved if there's a risk of serious harm, if you look at that section. They can then elect to step back in, to get back into the issue, in a situation where the private statutory guardian stops acting and there's a risk of harm. So that's in section 19 of the Substitute Decisions Act, as amended by section 13 of Bill 19. With due respect to Mrs Caplan, we feel that the section is unnecessary and we don't intend to support it because of that.

Mrs Caplan: Just to clarify, I just want to make the case; then I'll withdraw. The intention here was not to be redundant in language but to clarify. We felt it was clearer if the language was repeated. But if you are satisfied and if everyone seems to be satisfied that in fact the public guardian and trustee cannot take over a person's life unless they're concerned about harm, if that's the assurance I have from you, Mr Tilson, then I'll withdraw the amendment.

The Chair: So withdrawn? Thank you. Shall section 13 carry? Carried.

Moving on to section 14, our first amendment is—

Mrs Caplan: Page 17a. This is an alternate motion, actually, to the one I read in. I read the—

Mr Tilson: If it would help the committee, if you turn to page 18, which is the Liberal amendment, the government is prepared to accept that amendment.

Mrs Caplan: That's helpful.

Mr Tilson: So it might save a bit of debate.

Mrs Caplan: So on page 18 it would deal with the conflict of interest?

Mr Tilson: Yes.

Mrs Caplan: Fine. We had reworded it to be more specific, but that's just fine. We will withdraw 17 and move directly to 18.

I move that subsection 24(2.1) of the Substitute Decisions Act, 1992, as set out in subsection 14(3) of the bill, be struck out.

This does not any longer permit someone who is in a compensation relationship to be named a guardian. Is that correct?

Ms Spinks: Except a relative.

Mrs Caplan: I wanted to be clear on that. We had a number of concerns. We were looking for ways to do that and we had a number of different options. What we actually do here is revert to what existed, which allows relatives who have a relationship where they work and are paid for it, there is a compensation relationship, but no one else can be in a guardianship position for property. They can for personal care if there's a power of attorney that is a selection when the individual is capable, but they can't be named, I believe, unless it is at the clear instruction of the individual. You read that out for us once before, Trudy. It might be helpful to just put on the record at this point what is and is not allowed for someone who is in a compensation relationship.

Ms Spinks: Section 24 of SDA speaks to the appointment of a guardian to manage property by the court and says, "A person who provides health care or residential, social, training or support services to an incapable person for compensation shall not be appointed as his or her guardian of property." But there is an exception provided for the "person's spouse, partner or relative or to...the incapable person's guardian of the person," if there is one appointed, "the attorney for personal care" and "the attorney under a continuing power of attorney." So there are some exceptions.

Mrs Caplan: That clarifies it. We think that with those exceptions it's appropriate and we're pleased that you have accepted the amendment.

The Chair: Is it agreed that it's carried? Carried.

There's subsection 14(3) alternative. Do we need that one now, Mrs Caplan?

Mrs Caplan: No, that's the NDP one.

The Chair: No, there's an 18a.

Mrs Caplan: No, that's no longer required. That also is redundant.

The Chair: We'll just move directly to Mrs Boyd then, page 19.

Mrs Boyd: Obviously number 19 is not necessary. It was the same motion. So that can be discarded. But the next motion I would like to put forward.

I move that subsection 14(3) of the bill be amended by adding the following subsection to section 24 of the Substitute Decisions Act, 1992:

"Same

"(2.1.1) Subsection (2.1) does not apply if the person described in subsection (1) is the incapable person's guardian of the person."

This is the issue that Trudy just mentioned. She said that one of the exceptions under the previous section that we talked about is that if the person were the guardian of the person, they could also be the guardian of the property. That was one of the issues that we heard in terms of people having total control over the person and the property and the real possibility that someone might be taken advantage of under those circumstances.

The Chair: Excuse me. I do believe it may be out of order in that subsection (2.1) has been removed from the act and we're amending a subsection that no longer exists.

Mrs Boyd: I would still like very much to have this. Is there some way that we can add a section? This applies to the section that Ms Spinks talked about.

1410

Mr Tilson: Could we ask for unanimous consent to consider this and stand this issue down?

The Chair: Is there unanimous consent to have this matter stood down? Thank you. Section 14 has been stood down on unanimous consent.

I now shall ask whether sections 15, 16, 17, 18 and 19 shall pass? Is it carried? Carried.

Mrs Caplan: Unless Mr Tilson would like to speak to them.

The Chair: I'm pleased to see we're all retaining our sense of humour.

Section 20.

Mr Tilson: I move that section 20 of the bill be amended by adding the following subsection:

"(0.1) Section 32 of the act is amended by adding the following subsections:

"Personal comfort and wellbeing

"(1.1) If the guardian's decision will have an effect on the incapable person's personal comfort or wellbeing, the guardian shall consider that effect in determining whether the decision is for the incapable person's benefit.

"Personal care

"(1.2) A guardian shall manage a person's property in a manner consistent with decisions concerning the person's personal care that are made by the person who has authority to make those decisions.

"Exception

"(1.3) Subsection (1.2) does not apply in respect of a decision concerning the person's personal care if the decision's adverse consequences in respect of the person's property significantly outweigh the decision's benefits in respect of the person's personal care."

Mrs Boyd: I'm really delighted that the government has put this amendment in, because it answers some of those questions about what would happen if there were conflict in the circumstances between property and personal care. I think it's very helpful.

Mrs Caplan: We agree.

The Chair: It's carried.

Mrs Caplan: My question really is, in light of this, what impact this would have on what we've stood down.

Interjection.

Mrs Caplan: Okay, because that was the reason that we were comfortable, that they were moving this amendment as well.

The Chair: Shall section 20, as amended, carry? Carried.

Section 21.

Mr Tilson: I move that section 33.2 of the Substitute Decisions Act, 1992, as set out in section 21 of the bill, be amended by adding the following subsection:

"Copies of documents

"(3) A person who has custody or control of any document relating to an incapable person's property that was signed by or given to the incapable person shall, on request, provide the incapable person's guardian of property with a copy of the document."

The Chair: Is there any objection to that? Carried.

Shall section 21, as amended, carry? Carried.

Shall sections 22, 23, 24, 25, 26 and 27 carry? Carried.

Section 28.

Mrs Boyd: I move that section 28 of the bill be struck out and the following substituted:

"28. Section 41 of the act is repealed and the following substituted:

"Financial statements

"41. A guardian of property shall prepare regular financial statements in accordance with the regulations."

We heard many people come forward saying that removing the requirement to prepare a report, as was required under the old act, indeed put people at a disadvantage. It's rather important, from our perspective, since the government made very strong representations that it didn't need to be done this way, that it had given itself regulating power, that we just make sure that those regulations are mentioned in the bill and that it's clear that a guardian of property must prepare those in accordance with the regulations however they are set. The real issue is ensuring that there is a definite obligation within the act that a person's guardian of property needs to be in compliance with regulations.

The Vice-Chair (Mr Ron Johnson): Any further discussion?

Mr Tilson: The government will not be accepting or agreeing to this motion. We feel it's redundant. There's already a requirement in section 20 of Bill 19 which amends subsection 32(6) of the Substitute Decisions Act to require that a guardian of property keep accounts of all transactions involving property. As well, the regulation authority added by section 60 of Bill 19 will cover the content and disclosure of these accounts, and the incapable person will be entitled to the accounts.

Mrs Boyd: The keeping of accounts and the making of a report from those accounts are two different things. For the guardian to have those accounts someplace and to keep them is one thing; having the report of that available upon request is a different issue.

Mr Tilson: Our position was supported by the Alzheimer organization, the Canadian Bar Association. With respect, it's the same information.

Mrs Boyd: It wasn't supported by the Canadian Mental Health Association or the Independent Living Centre of London. We can trade these things. There were a significant number of deputants who came and said, "Why are you taking out the requirement for people to give regular reports when they're the guardians of property?" It is good that they're going to have to keep accounts. It is good that you're going to pass regulations to tell them how to keep those accounts. Keeping of accounts and reporting of accounts are two different things.

The Vice-Chair: Seeing no further discussion, all those in favour of the amendment?

Mrs Boyd: Recorded vote, please.

Ayes

Boyd.

Nays

Caplan, Doyle, Grandmaître, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Vice-Chair: The motion is defeated.
Shall section 28 carry? Carried.

Section 29? Carried.

Section 30, Liberal amendment.

Mrs Caplan: I move that section 30 of the bill be amended by adding the following subsection:

"(5.1) Section 46 of the act is amended by adding the following subsection:

"Same, research

"(8.1) The power of attorney may authorize the attorney to request or consent to a procedure whose primary purpose is research."

We dealt with this under the Health Care Consent Act. The decision was that the government would not support it in the Health Care Consent Act because it was new. All this does is clarify that which the common law makes unclear when it comes to powers of attorney. I'd make the argument again that this is a place holder while all of the consultation goes on that may have a future amendment and change to the health care consent and the substitute decision legislation, and this is for the question of clarity of the law.

It's because the common law is unclear as to whether or not this is permitted and for those who have degenerative diseases who came before this committee and asked for that clarity. Because there are people now who are doing that, they just want to know that their wishes will be respected. When I say "doing that," they're making out powers of attorney saying that if they have a degenerative disease, while they're competent they want to be able to direct their substitute decision-maker or their guardian to permit them to participate in research studies.

I would hope that at this point the government will include this, recognizing that it is a place holder, it's a Band-Aid and it's temporary, but it clarifies the common law, which may permit it today. It may; it may not. It's not like we're entering in a new concept here. There's nothing new about this. It's just allowing people to do what they've said they want to be able to do, and that is be clear that their wishes that are set out in a power of attorney will be respected.

Mr Tilson: We spent some time with this during the consent to treatment part of our debates and it certainly is a very complex and controversial issue, so much so I'm going to ask Ms Spinks to make some comments.

1420

Ms Spinks: Trudy Spinks, for the record. As I said earlier, the people who do medical research and run these studies, and some very prominent people, have concerns about any change to the legislation. I think they're quite willing to discuss changes but at the moment quite strongly support subsection 66(13) of the current SDA, which says that nothing in this act affects the common law relating to research.

We would be changing that by adding in a section which would then come into conflict with that. I understand the rationale behind the proposal and I think we're all agreed that it's an issue that needs to be looked at and given high priority, but to make a change now in the legislation by adopting this motion might cause some unintended complications with respect to other aspects. Until all of those issues can be considered together and the appropriate consultation done, it may be more dangerous to try and make a change at this point than to look at

making a change fairly soon but in a more comprehensive way.

Mrs Caplan: I want to be clear, Trudy, that you understand what it is I want to do here. I don't believe that anyone who's appointed a guardian should be able to consent to research—that wouldn't be the change we're doing—unless that person is specified in a power of attorney and in written form someone has given a clear advance directive. Those are two different concepts. This legislation deals with statutory guardianship without a power of attorney and advance directives, the ability to write a power of attorney. Those are two different concepts.

I understand the concern about allowing a guardian under a statutory guardianship provision to be able to make those decisions, and I agree that before any changes are made on that side, all of the consultation you want to undertake is absolutely appropriate. It may also result in the form and so on, on the statutory obligation under the power of attorney, but the intention here is that what exists today—because you do have these two different concepts: You have the power of attorney and you have statutory guardianship.

I don't want to touch statutory guardianship. That's where I think the controversy lies. But I don't believe there is or should be any controversy about respecting of wishes, and this legislation in many places talks about respecting a person's values, allowing them to write advance directives, letting them get into Ulysses contracts, letting them write a power of attorney and having instructions in that power of attorney. I don't think it is at all controversial or at all a stretch to allow them also to express their wishes in writing, while they are competent, in a power of attorney as to whether or not they want to participate in research projects.

It's very narrow. What this would permit is a very narrow clarity, and while I hear you say it's a priority, I know how difficult it is to get this legislation on the government's agenda. This is not something that gets on and gets legislative time and has committee time. The issues surrounding consent and advocacy and substitute decision legislation were 20 years till they got on the agenda. Three governments fiddled around with consultations on it before it was brought in by the last administration.

My fear and my worry is that we can today, because the act is open and we're here, accommodate one very narrow area where we have had requests, and that's people with Alzheimer's, people with AIDS, people who today are understanding and able to appreciate the benefit that would come if they were able to say while they are competent that they want to be a part of the research study of the disease. I think it's that narrow that it would not be dangerous, because someone would state that in a power of attorney: it would be written, it would be their wishes, it would sit with their values and it does not affect statutory guardianship. It's only in the very narrow power of attorney, and I'd ask you to reconsider the request, because it is something that we heard from deputations.

I understand the academic work that Professor Weiss-tub is doing and I respect that, but I think he's dealing

more with the issues of statutory guardianship and all of the complexities around all of the issues of being able to have a substitute say, "We want you out." This is a simple request and it's very narrow. If a substitute can opt you in with a power of attorney, they can also opt you out, because that person has discussed this matter with the individual when they were competent. They understand their values, their wishes and their desires.

I think it's wrong at this time to miss this opportunity to respond to that very narrow concern about someone being able to express that wish while they're competent. I make that plea because I don't know how quickly you're going to get back on the legislative agenda on an issue which is, frankly, as esoteric as this one. I'll hope you'll reconsider. Any chance?

The Vice-Chair: Any further discussion? Seeing none, all those in favour of the amendment?

Mrs Boyd: Recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Vice-Chair: The amendment is defeated.

Shall section 30 carry? Carried.

Section 31. Mrs Boyd.

Mrs Boyd: The effect of this motion would be similar to one that was previous around the witness having reasonable grounds to believe the grantor of a power of attorney was competent at the time. We won't go through the arguments again, we'll just repeat that the Toronto Mayor's Committee on Aging, the Psychiatric Patient Advocate Office, the Ontario Association for Community Living, the adult psychiatric services, Blake, Cassels and Graydon and numerous other people coming before us felt that indeed there needed to be some indication that the person was competent at the time and the witness had that sense. I will withdraw the motion with great disappointment.

The Vice-Chair: That motion is withdrawn.

Shall section 31 carry? Carried.

Section 32, first amendment is a Liberal amendment. Mrs Caplan.

Mrs Caplan: I move that section 49 of the Substitute Decisions Act, 1992, as set out in subsection 32(1) of the bill, be amended by adding the following subsection:

"Notice to grantor

"(3.1) Before an attorney first exercises authority to make a decision concerning a grantor's personal care, the attorney shall give notice to the grantor that the attorney believes the grantor is incapable of making personal care decisions and that the attorney is acting on the grantor's behalf, under the authority of the grantor's power of attorney for personal care."

This would foster communication, which I think quite naturally we would all expect to exist anyway, but because sometimes as people become incapable, particularly with progressive illnesses, they may not realize that their power of attorney and their decisions are now being made by the person that they had asked to make deci-

sions for them. I think it's helpful to foster communications, particularly in difficult times when you might not want to talk about things. We felt that this was respectful. One of the tests that we would like to always have when we're looking at public policies is respect for the dignity of the individual.

We're not requesting a Mirandizing type of thing where you would have to say to the person, "I'm, by statute, required." That's not what we're intending at all. All we're saying is you have an obligation to say: "Mom, Dad, I'm going to be making this decision for you. Remember you signed that power of attorney asking me to do this, and it's time." There's no longer a requirement for validation or anything else, as was in the previous legislation, and we agree with that. We think that was cumbersome and time-consuming and unnecessary. We think this is just a good idea.

Mr Tilson: The government will be opposing this motion. We believe it's redundant. I refer the member to subsection 66(2), which says, applying to duties of guardians of the person and attorneys for personal care: "(2) The guardian shall explain to the incapable person what the guardian's powers and duties are." We believe that adequately answers the member's concerns.

1430

Mrs Caplan: I think it's different to explain what the powers and the duties are as opposed to the fact that you're doing it. Maybe it's a technicality. I just think what our amendment does is say, "I'm now going to be making those decisions for you, as we agreed previously, and, by the way, that allows me to do such-and-such."

Mr Tilson: Well, that's what you're supposed to do. Maybe our argument is in semantics.

Mrs Caplan: I didn't like your language then. It wasn't clear enough, that's all.

The Vice-Chair: Seeing no further discussion, all those in favour of the amendment? Opposed? The amendment is defeated.

The next amendment on section 32 is a government amendment.

Mrs Caplan: Is there any way we can dispense with the reading and just approve it?

The Vice-Chair: If you agree.

Mr Tilson: It's essentially the Ulysses contract issue, Mr Chairman.

The Vice-Chair: Mr Tilson, I am sorry. It does have to be read into the record.

Mr Tilson: I move that subsections 50(1), (2) and (3) of the Substitute Decisions Act, 1992, as set out in subsection 32(1) of the bill, be struck out and the following substituted:

"Special provisions

"(1) A power of attorney for personal care may contain one or more of the provisions described in subsection (2), but a provision is not effective unless both of the following circumstances exist:

"1. At the time the power of attorney was executed or within 30 days afterwards, the grantor made a statement in the prescribed form indicating that he or she understood the effect of the provision and of subsection (3.1).

"2. Within 30 days after the power of attorney was executed, an assessor made a statement in the prescribed form,

"i. indicating that, after the power of attorney was executed, the assessor performed an assessment of the grantor's capacity,

"ii. stating the assessor's opinion that, at the time of the assessment, the grantor was capable of personal care and was capable of understanding the effect of the provision and of subsection (3.1), and

"iii. setting out the facts on which the opinion is based.

"List of provisions

"(2) The provisions referred to in subsection (1) are:

"1. A provision that authorizes the attorney and other persons under the direction of the attorney to use force that is necessary and reasonable in the circumstances,

"i. to determine whether the grantor is incapable of making a decision to which the Health Care Consent Act, 1995 applies,

"ii. to confirm, in accordance with subsection 49(2), whether the grantor is incapable of personal care, if the power of attorney contains a condition described in clause 49(1)(b), or

"iii. to obtain an assessment of the grantor's capacity by an assessor in any other circumstances described in the power of attorney.

"2. A provision that authorizes the attorney and other persons under the direction of the attorney to use force that is necessary and reasonable in the circumstances to take the grantor to any place for care or treatment, to admit the grantor to that place and to detain and restrain the grantor in that place during the care or treatment.

"3. A provision that waives the grantor's right to apply to the Consent and Capacity Board under sections 30, 48 and 63 of the Health Care Consent Act, 1995 for a review of a finding of incapacity that applies a decision to which that act applies.

"Conditions and restrictions

"(3) A provision described in subsection (2) that is contained in a power of attorney for personal care is subject to any conditions and restrictions contained in the power of attorney that are consistent with this act.

"Revocation

"(3.1) If a provision described in subsection (2) is contained in a power of attorney for personal care and both of the circumstances described in subsection (1) exist, the power of attorney may be revoked only if, within 30 days before the revocation is executed, an assessor performed an assessment of the grantor's capacity and made a statement in the prescribed form,

"(a) indicating that, on a date specified in the statement, the assessor performed an assessment of the grantor's capacity;

"(b) stating the assessor's opinion that, at the time of the assessment, the grantor was capable of personal care; and

"(c) setting out the facts on which the opinion is based."

Mrs Caplan: We had a gentleman come before the committee who said he was concerned that the Ulysses contract would not allow him to say: "Listen to my wife. Don't listen to me. She knows when I'm sick. I'm a very good actor. I can fool the best of them." Will this respond to his concern?

Mr Tilson: We believe so, Mrs Caplan. I do recall him coming to this committee; I think that was in the first

week. This response to the Ontario Friends of Schizophrenics, of Robert Walsh, Advocacy Centre for the Elderly, that wants the grantor of this special kind of attorney to tailor their needs to this document, to suit their needs—we believe that individual's concerns will be satisfied.

Mrs Caplan: I'd ask, Mr Chairman, that you ask the clerk to send them a copy of the Hansard that has this in it, I appreciate that and we'll be supporting it.

The Vice-Chair: Thank you, Mrs Caplan. Seeing no further discussion, all those in favour of the amendment? Carried.

The next amendment to section 32 is a government amendment. Mr Tilson.

Mr Tilson: I move that clause 32(2)(b) of the bill be struck out and the following substituted:

"(b) both of the circumstances described in subsection 50(1) of the act, as re-enacted by subsection (1), shall be deemed to exist in respect of each provision."

The Vice-Chair: Any discussion? All those in favour? Carried.

Shall section 32, as amended, carry? Carried.

Section 33, government amendment, Mr Tilson.

Mr Tilson: I move that clause 52(d) of the Substitute Decisions Act, 1995, as set out in subsection 33(1) of the bill, be struck out and the following substituted:

"(d) unless the power of attorney provides otherwise, the grantor's spouse or partner and the relatives of the grantor who are known to the attorney and reside in Ontario, if the power of attorney does not provide for the substitution of another person or the substitute is not able and willing to act."

The Vice-Chair: Discussion? Seeing none, all those in favour? Carried.

The next amendment, Mr Tilson.

Mr Tilson: I move that section 33 of the bill be amended by adding the following subsection:

"(1.1) Section 52 of the act is amended by adding the following subsection:

"Exception

"(1.1) Clause (1)(d) does not require a copy of the resignation to be delivered to,

"(a) the grantor's spouse, if the grantor and the spouse are living separate and apart within the meaning of the Divorce Act (Canada); or

"(b) a relative of the grantor, if the grantor and the relative are related only by marriage and the grantor and his or her spouse are living separate and apart within the meaning of the Divorce Act (Canada)."

The Vice-Chair: All in favour? Carried.

Shall section 33, as amended, carry? Carried.

Section 34, Mr Tilson.

Mr Tilson: I move that subsection 34(2) of the bill be struck out and the following substituted:

"(2) Clause 53(1)(c) of the act is repealed and the following substituted:

"(c) when the grantor executes a new power of attorney for personal care, unless the grantor provides that there shall be multiple powers of attorney for personal care;"

The Vice-Chair: Any discussion? All those in favour? Carried.

Shall section 34, as amended, and section 35 carry? Carried.

Section 36, Liberal amendment, Mrs Caplan.

1440

Mrs Caplan: Are you going to accept this, Mr Tilson? It's the same as the other one.

I move that subsection 57(2.1) of the Substitute Decisions Act, 1992, as set out in subsection 36(3) of the bill, be struck out.

This is a conflict-of-interest provision that says that somebody who is in a compensation relationship cannot be a guardian. You accepted the last one. I'm assuming this is the same and you'll accept this as well.

Interjection.

Mrs Caplan: Did I skip 31a? I did it again. I'll just check. Can you show me the copy of it, Donna? I wanted to do this one first. I want to do this instead to see if they'll accept it. Number 31 is the one I read into the record. I have an alternative if that's not acceptable, but since you accepted the last one, I thought you'd accept—

Mr Tilson: Mr Chairman, to Mrs Caplan—

Mrs Caplan: Oh, we'll accept yours. It's your motion. I read yours in.

Mr Tilson: This has to do with personal care, and we are not agreeing with respect to the issue as to personal care. We agreed with the issue with respect to property. So whatever motion you're doing with respect to personal care, whichever one you want to choose, we disagree.

Mrs Caplan: I read yours into the record in error, so I don't think you want to speak against your own motion.

Mr Tilson: Keep up the good work.

Mrs Caplan: Mine is on 31a, subsections 36(1) and (2) of the bill.

I move that subsections 36(1) and (2) of the bill be struck out and the following substituted:

"(1) Subsection 57(1) of the act is repealed and the following substituted:

"Who may not be appointed as guardian

"(1) The following persons shall not be appointed as an incapable person's guardian of the person under section 55:

"1. A person who provides health care or residential, social, training or support services to the incapable person for compensation.

"2. A director, officer, employee or agent of a person described in paragraph 1."

The concern we have as I speak to this one is as follows. If you have a financial interest in the person you are caring for, you should not also be able to be the guardian of their personal care. There is a direct conflict of interest for someone who operates the nursing home, for example, to be your guardian. I'd much rather have the office of the public guardian and trustee, if that's the only and last resort, than to have the nursing home operator have total control of your life, total control of all the decisions that are made about your personal care. We think it's inappropriate that someone who is in a compensation relationship with you should be able to be your guardian as well as having the relationship where they are being paid either by you personally or by someone else to look after you.

It's a choice here. There's no one else, there's no family, there are no friends, there are no relatives, there's nobody; whom do you choose? Do you want the nursing home operator or the public guardian and trustee? I have to tell you, as much as I don't like the public guardian and trustee, I at least think they wouldn't have a conflict in making decisions and directing the nursing home or the long-term-care operator. It's not that I'm saying the nursing home operators are bad. I don't. I just think it places them in an untenable position and that we can avoid that by excluding them from being able to be in that difficult situation of having a guardianship, which is total control of someone's life for personal decisions, at the same time as they're getting paid to look after the person.

Mrs Boyd: To carry those out.

Mrs Caplan: To carry those out, yes. It's like you talk to yourself. You look in the mirror and you say: "So, what do I think I should do for the person whose life I control today? Oh, okay, you think I should do that?" You're talking to yourself. That's just wrong.

Mrs Boyd: We agree absolutely. If anything, this is even more important than the guardianship of property. Property is property. It's serious, everybody takes it seriously, I think, but it's not nearly as serious as somebody's life.

If we read the Lightman report and hear about what goes on in unregulated areas, this is exactly the kind of thing that people fear, and they came in front of us saying that they feared this. Homes for special care is a similar kind of thing. The stories around the abuse of people in these circumstances are legion. This committee received the reports around abuse in institutions in particular. Many people on this committee questioned whether or not we were being paranoid in saying that this was a reality. I think the researcher provided us with ample evidence that this is a problem.

If the person is totally under the control of someone who runs an operation, someone who is paid to exercise care over that person, it is a very serious conflict of interest. It puts people in complete jeopardy. Quite frankly, I would hate to imagine what will eventually unfold in the future in terms of reports of abuses of this section. It is very serious. It is a conflict of interest.

I would urge the government to support this amendment because it is absolutely essential that those who are incapable know that the government is not giving a licence to someone who is compensated for looking after them to make the decisions about how that care is going to be done in that way.

Mr Marchese: For the record, I just wanted to point out that there were a number of groups that had spoken to this. I wanted to support my colleague and Mrs Caplan as well in terms of their remarks by reading into the record what they've said.

One organization says, "The current prohibition against service providers acting as guardians should be retained." Three other organizations say, "Allowing caregivers to act as guardians for personal care could create a conflict of interest." "Where there is no other suitable person, the PGT should be appointed to act as a guardian rather than a service provider." That's one other organization.

Another organization has said: "Section 57(1) of the SDA should remain unamended. A paid caregiver should not be permitted to become a guardian of a person or property." So there is a sufficient number of people who are very worried about this.

My colleague has made the point, "Well, you dealt with the issue of property." The issue of care is no less important. In fact, Mrs Boyd said that we're dealing with a person's personal and mental needs, which are as important if not more important than property. So we certainly support this amendment.

Mr Tilson: I can honestly say all of the issues with respect to substitute decisions have given our caucus the greatest amount of discussion. We spent a great deal of time on this among ourselves. The issue of conflict is a really tough issue. One could look at the issue of children. Children could conceivably have a conflict, particularly if they're looking after something they may feel is going to be theirs down the line. I'm not talking about who's bad and who isn't bad.

Mrs Boyd: That's what we've been saying all along.

Mr Tilson: The conflicts could go on and on. I recognize the issue of conflict. It's a tough issue. As Mr Marchese indicated, we've already eliminated the possibility of paid service providers acting as a guardian of property, subject to the exception for relatives which is already in the act. That removes the concerns we have of conflict, because the issue of money is what generates the most prominent issue of conflict, money and the issue of resources.

1450

What we are trying to recognize here is that there may be a few cases—and I'm going to say something which I know is going to get my NDP friends all upset.

Mr Marchese: Then don't say it.

Mr Tilson: Well, I enjoy getting you upset.

Interjection.

Mr Tilson: I'm not trying to make this a light issue, Mrs Boyd. This is a very serious issue. The issue of faradaic stimulation, for example, is an outright ban which you put forward. Without getting into all that again, and I don't want to get into that again—

Mrs Boyd: Then you shouldn't have mentioned it.

Mr Tilson: But it's an example of the risk of making outright prohibitions. Where a person is paid and is still around, that may be the most trusted person available—there may not be anyone else—and therefore the best person to be the guardian.

There's the example of a homemaker or someone who stays in a home with an individual who is paid and maybe trusted, and that does happen. They actually live in the home with someone for years and years and years. Many of us have had it in our own families. I know of many examples, particularly in small towns. They may be the best people available, even though they're being paid. That's why we're most reluctant to make an outright ban.

Mr Marchese asked me a question early in the proceedings on this issue, about service providers, and I commented at that stage about the court making the decision. All of this, you must remember, has to be approved by the court. I'm looking at section 36 on page 21: The court must be satisfied that "there is no other

suitable person"—suitable person—"who is available and willing to be appointed." I'm going to repeat the comments I made to Mr Marchese's question in the first week, that we believe the courts can assess this in deciding suitability.

I've just been referred to a delegation that came before us, the Brantford and District Association of Community Living. Mrs Moore said:

"I'd like to make several comments actually, but I'll start with that one. As a parent, I wouldn't feel that there was a conflict of interest, and if there was, it would be to my daughter's advantage to have someone who worked for the association or who was employed by the association be the substitute decision-maker. I think that's basically what we're looking for, rather than someone out there in the community who knows nothing about our sons or our daughters or how they function."

There are those rare situations, and this amendment would cut off those rare situations. One final comment, Mr Chair; I know I've gone on perhaps unduly long. You must also remember that the public guardian and trustee does get served with all applications, so in addition to the court reviewing it, you've got the public guardian and trustee reviewing this. You've got the courts and the public guardian and trustee. I think that adequately explains why the government will be opposed to that proposal of Mrs Caplan.

Mrs Caplan: I'm not going to go on at any length. I just want to go on the record as saying I think there's tremendous potential for abuse. If there are cases that come forward, this simple change in the law could avoid those. If you wanted to amend this so that you were in a fee-for-service relationship, or exempt the kind of service associations you've identified, there might be some common ground there, where it was an organization that didn't have a financial interest because they weren't being paid directly. I think they would be exempted from this, because it refers to a compensation relationship, and an organization like the Canadian Mental Health Association or a local chapter may provide some service, but they're not in a compensation relationship directly with the individual. If the wording isn't clear enough to allow for that case, I'd be happy to have you stand it down and look at how to do that.

The concern I have is that this legislation is in place to deal with those difficult, vulnerable, exceptional circumstances, and to leave the door open for this kind of conflict of interest and potential abuse I think is misguided. You can close that loophole, because there is another alternative. It's not as though this is the last resort. This isn't. The last resort is the office of the public guardian. If you didn't have the office of the public guardian, you could struggle with, what are you going to do if there's nobody else, no one else who's suitable? But there is someplace else and someone else who is suitable, because the public guardian and trustee actually requires a plan to be carried out; they can give direction.

While it may not be the most desirable thing to have the public guardian, I think it is more desirable than having someone who has a direct financial interest in the person over whom they have total control in making personal care decisions. I don't see that we can't deal

with those exceptions, those few exceptions, without opening up others to that kind of potential abuse because of that conflict you are permitting in this legislation. This legislation permits people with a direct conflict of interest because of their financial interest, the fact that they are being compensated for the service they provide.

That's all I have to say. I think you've made the wrong decision. I feel very strongly about this and I'm sorry I can't convince you, but when something happens, you will be responsible.

The Vice-Chair: Seeing no other speakers, shall the amendment carry?

Mrs Boyd: Recorded vote, please.

Ayes

Boyd, Michael Brown, Caplan, Grandmaître, Marchese.

Nays

Doyle, Johns, Klees, Leadston, Parker, Tilson.

The Vice-Chair: That amendment is defeated.

With respect to the order of the amendments, it would appear to make sense to bring page 34a forward at this point, so we'll deal with that one now.

Mrs Boyd: This is actually a companion to the motion we stood down on section 14.

I move that section 36 of the bill be amended by adding the following subsection:

"(2.1) Paragraph 1 of subsection 57(2) of the act is repealed."

The force of this would be that if someone is named as a guardian of property, they could not also be the guardian of person, and vice versa if you take the companion. In this one it means the person could not be both guardians if they were in a compensation situation.

Mr Tilson: We don't believe it's necessary, considering our amendments to section 24.

The Vice-Chair: Seeing no further discussion, all those in favour of the amendment? Opposed? The amendment is defeated.

The next amendment will be a Liberal amendment, page 32 in your binder.

Mrs Caplan: What happened to page 31? Did he ever read it in and pass it?

Clerk of the Committee: Yes. The amendment on page 31 was a government motion, and that was moved and carried.

The Vice-Chair: We're now on page 32, the Liberal amendment.

1500

Mrs Caplan: I think it's redundant. It would accomplish the same thing we've just been arguing and debating around conflict of interest. It would strike out the new clause and it would put back what has been in place, which would not permit that conflict. The reason we had the amendment before it was that we tried to modify that somewhat. Unless the government's changed its mind in the last minute and a half, I'll withdraw it.

Mr Tilson: I don't think so, Mrs Caplan.

The Vice-Chair: So that is not moved, then? On to 32a, the alternative Liberal amendment.

Mrs Caplan: That one I will place, because this is where we've tried again to do it a little differently. Let me put it in this context.

I move that subsection 57(2.1) of the Substitute Decisions Act, 1992, as set out in subsection 36(3) of the bill, be struck out and the following substituted:

"Same

"(2.1) Subsection (1) does not apply to a person if,

"(a) The compensation received by the person for providing the health care or the service is not received from the incapable person;

"(b) The person does not provide a residence to the incapable person;

"(c) The person does not administer controlled acts within the meaning of section 27 of the Regulated Health Professions Act, 1991, to an incapable person; and

"(d) The court is satisfied that there is no other suitable person who is available and willing to be appointed."

Rather than a broad prohibition against anyone in a compensation relationship, this one says—I'm going to go through them, (a), (b), (c), (d). You see, (a) would allow the Canadian Mental Health Association or any local advocate group that isn't receiving compensation from the incapable person to provide the service. In other words, if government's paying on your behalf, you can be a guardian. You're not being paid directly by the individual, so there's no coercion possible.

(b) The person doesn't provide a residence; that would say nursing home, home for the aged. In fact, that was the reason, Mr Tilson, that I wanted the Domiciliary Housing Review as well as being able to look at what those implications are from a report, because you could have a situation where someone is providing a residence—and we know there have been myriad abuses, and we have a study provided to us on the study of abuse of patients in nursing homes.

Mr Tilson: We're still trying to get it.

Mrs Caplan: That was one of the reasons I wanted this. I believe that if you are in a position where the person is under your control and you're being paid to provide a home, you're getting rent—in the form of an unregulated boarding house, for example—you should not be in the position of being named the guardian for personal care as well.

Where it says "administer controlled acts", that would mean that professionals under the Regulated Health Professions Act should not be able to be named because they're providing the care directly.

However, it says the court can override all of that if they're satisfied that there is no other possible person. That's where the court is satisfied that there's no other suitable person who is available and willing to be appointed. I'm hoping you'll support this one.

Mrs Boyd: I'm not sure Mrs Caplan is right that the court would override, because her word at the end of section (c) is "and" rather than "or." It would have to be "or" if the court could override any of these particular circumstances. If that's what you mean, that the court could overrule it, you do want the word "or"; you don't want the word "and."

Mrs Caplan: If I may, Mr Chair, it should be amended to read "or" as opposed to "and." It would then

give the direction to the court that says none of these people should be considered suitable "unless." Thank you, Mrs Boyd. In speaking to this, what you've said is that the court takes these things into consideration.

The Vice-Chair: Sorry, but technically you have to change the word and re-read it into the record. Just that clause will be fine.

Mrs Caplan: "(c) the person does not administer controlled acts within the meaning of section 27 of the Regulated Health Professions Act, 1991, to the incapable person; or

"(d) the court is satisfied that there is no other suitable person who is available and willing to be appointed."

The intention of this is to give direction to the court. It says by law, "We don't think any of these people are suitable, and be really careful before you appoint any of them, but okay, if there is the exception," the one in a thousand or hopefully fewer than one in a thousand exception, the court can make that decision. We'd feel more comfortable if the court knew how strongly the Legislature felt about restricting people in these categories from having guardianship for personal care when they are in a conflict situation.

Mr Tilson: We can't accept this. I can understand what you're trying to do. You've listed some exceptions, but we don't think it's possible to list all the exceptions, and ultimately, a court's going to have to look at this thing. We believe that because it's impossible to list all the exceptions, only the court can do that. I'm not going to go any further because I'm going to start repeating what I've said before. We simply think it's impossible for you to list all those exceptions.

Mrs Boyd: I think the purpose of Mrs Caplan's amendment is not to list all the possible exceptions but to list the three most serious ones as a direction to the court. These are serious conflict-of-interest situations. There may be others, but these ones are serious. We are saying, by having that in the act, that we would not allow this under these circumstances except if the court deems it appropriate. That's why the wording of "and" or "or" was so important.

It means the court still makes the decision. The court can still allow under any of these circumstances, but it alerts the court that under anything but the most unusual circumstances the Legislature did not contemplate that these people would be named as guardians of personal care.

If we are to believe the explanation that was given by the parliamentary assistant in defeating the previous amendment to this effect, that we don't need it because the courts decide, this still applies, the courts will still decide, but the court will know that the Legislature was concerned about conflict of interest, was concerned about vulnerable people. If the government again defeats this motion, it will be just another way for vulnerable people to know that for all their fine words, they really are not concerned with protecting them from people who might act in conflict of interest. The court still has the authority here, but the court is alerted that the Legislature's intention was to protect vulnerable people. If that's not the government's intention, they will defeat this motion.

Mr Tilson: I can only remind Mrs Boyd, the former Attorney General, that until April 3, 1995, under the Substitute Decisions Act, there was no limit, no limit at all.

Finally, I'm going to repeat the section I read earlier, section 36, that there will be no appointment "if the court is satisfied that there is no other suitable"—and the court will define who is suitable, because there may be all kinds of determinations the court would have to take as to who is and who isn't suitable—"if the court is satisfied that there is no other suitable person who is available and willing to be appointed."

1510

Mrs Boyd: Mr Tilson, of course, can't resist taking shots. He knows very well that from the day our government was elected, this was a major concern of ours. We passed the act in 1992. We gave time for people to understand what it meant and the education around it so things could be put into place, and in fact we did enact it, and one of the things we enacted was protection against people from being taken advantage of exactly in this way.

Now, if the government is saying they think that isn't sensitive enough to very special cases, we are saying, here is your way of showing that's what you want to do, that you want to protect vulnerable people. This is the way you can do it; the court still decides.

But to say it's inappropriate for the Legislature to give direction to the court about what it thinks is suitable or not is absolute nonsense. Legislation does that all the time for the courts, particularly when it's protecting vulnerable people, if you think of the Child and Family Services Act, for example. It is absolute nonsense for him to suggest that the court would not welcome some guidance, frankly, around who might be suitable and who might not. They still might decide that the person was the only person available, and that is up to the court, but for the Legislature to give guidance around the protection of vulnerable people is not at all unsuitable. I'm very surprised that the member is continuing to oppose this amendment.

The Vice-Chair: Seeing no further speakers, shall the amendment carry?

Mrs Caplan: Recorded vote.

Ayes

Boyd, Michael Brown, Caplan, Marchese.

Nays

Doyle, Johns, Klees, Leadston, Parker, Tilson.

The Vice-Chair: That amendment is defeated. Still in section 36, the next amendment is an NDP amendment.

Mrs Boyd: I don't think it's in order, given what we've talked about, Mr Chair. It is in order?

The Vice-Chair: It is in order, yes.

Mrs Boyd: Okay. I move that subsection 57(2.1) of the Substitute Decisions Act, 1992, as set out in subsection 36(3) of the bill, be struck out.

Mrs Caplan: I agree with Mrs Boyd. I don't think it's in order.

The Vice-Chair: All those in favour? Opposed? Defeated.

The final amendment to section 36, again an NDP amendment.

Mrs Boyd: This definitely isn't in order, is it? I'm sorry. These are all redundant. We've already dealt with this.

The Vice-Chair: No, it is in order.

Mrs Boyd: Okay. I move that subsection 36(3) of the bill be amended by adding the following subsection to section 57 of the Substitute Decisions Act, 1992:

"Same

"(2.1.1) Subsection (2.1) does not apply if the person described in subsection (1) is the incapable person's guardian of property."

The Vice-Chair: Any discussion? All those in favour? Opposed? The amendment's defeated.

Shall sections 36, 37, 38 and 39 carry? Carried.

Section 40, a Liberal amendment.

Mrs Caplan: I move that subsection 62(7) of the Substitute Decisions Act, 1992, as set out in subsection 40(4) of the bill, be amended by striking out "90" in the second line and substituting "30."

I think it's self-explanatory. I hope the government will support it. We heard from numerous presenters that 90 days was too long, that it should be 30 days. We think this would respond to all the concerns raised, and I'm waiting for a signal that says, "We accept this amendment." We don't? Then I'll speak to it.

I'm disappointed to hear that the government is not going to be supporting this amendment. This is the duration of an appointment, the appointment of a statutory guardian. We think that when this is done, before there is a review it should be 30 days, that that's long enough when you're doing an application for statutory guardianship. I'd like to know from the parliamentary assistant why you are rejecting the advice of all those who came forward and said 30 days, not 90 days. That's a long time for someone to have all their rights taken away from them.

Mr Tilson: We believe it's up to the courts, that they need that discretion. The courts had expressed concerns about the seven-day limit on temporary guardianship, and we simply don't think that making it 30 days really answers their concerns. The maximum of 90 days is a maximum. The courts, in their discretion, and they do have that discretion, can make it less. The 90-day period is consistent with the maximum time period allowed of a temporary guardianship of property. The issue of notice is really not relevant, because section 62 of the Substitute Decisions Act is amended by section 40 of the bill, which requires to make as soon as possible because of urgency, and it was dispensed with.

Mrs Boyd: We did hear from a number of people real concern about this, that guardianship of the person is different from guardianship of property, that 90 days is a very long time for someone to be under the complete power of someone else. We certainly heard from the Psychiatric Patient Advocate Office, ACE, LAW, that indeed this was very excessive and quite frightening to people who might be deemed to be incapable.

Mrs Caplan: The existing law is seven days. We accept and understand that the seven days is a problem, but instead of saying four times seven days, which is the

30 days—that's four times as long as the law presently allows now—you're going to 90 days on the basis of consistency with control over property. I would argue that control over property is very different from control over a person's person. There's no rationale to go from seven days to 90 days. I think it's reasonable. It's very frightening for people to be put into statutory guardianship, and 30 days should respond to the court's concern that seven days is inadequate. To give them the discretion to go to 90 days—and while you say that's the maximum, let me tell you, you've got to be very careful in the directions you give. When you say maximum 90 days, you're saying 90 days is okay. I don't think 90 days is okay. In fact, I'm sure 90 days is not okay for a temporary statutory guardianship, which today only allows seven days. There's no need to go that far. Four times as long, one month, 30 days, is a reasonable accommodation of the court's concern before a review. I'd ask you to reconsider that, because it is very different: Control of the person and control of their property are very different notions.

Mr Tilson: Without getting into extensive repetition, Mr Chairman, I can only say that the courts have extensive experience in this whole issue. We have confidence in the judicial system, and we believe they should be allowed that discretion. Certain circumstances may require one period of time, and another another, and the court should be allowed that flexibility to make those types of decisions.

The Vice-Chair: Seeing no further speakers, shall the amendment carry?

Ayes

Boyd, Caplan, Grandmaître, Marchese.

Nays

Doyle, Johns, Klees, Leadston, Parker, Tilson.

The Vice-Chair: The amendment is defeated. Shall sections 40, 41 and 42 carry? Carried.

Section 43, a Liberal amendment.

Mrs Caplan: I move that subsection 43(4) of the bill be struck out.

1520

The Vice-Chair: Any discussion?

Mrs Caplan: Subsection 43(4)—let me just find the spot here so that I can—

Mr Marchese: Page 24 at the bottom.

Mrs Caplan: Page 24 at the bottom. It says, “in deciding what is in the person's best interests...for the purpose of subsection (3), the guardian shall take into consideration,” and 43(4)—just a second.

Mrs Boyd: That's on page 25.

Mrs Caplan: That's what I thought.

Okay, that's what I was looking for. I didn't have my note here.

The part that we think should come out is that “the guardian shall not use confinement or monitoring devices or restrain the person physically or by means of drugs and shall not give consent on the person's behalf to the use of confinement, monitoring devices or use of restraints, unless (a) the practice is essential to prevent

serious bodily harm and (b) the practice is consistent with the guardianship plan.”

Interjection: What the government's motion does—

Mrs Caplan: —is takes out—

Interjection: —clause (b).

Mrs Boyd: The guardianship plan.

Mrs Caplan: Right. I believe the guardianship plan should be in is the point that we're making here, and what I read in, and this is where this legislation gets a little complicated and confusing so I apologize for taking a couple of minutes, but on page 25 your subsection takes out the “and” between the (a) and the (b). The (a) is saying that you can only use restraint and monitoring if it's essential to prevent serious bodily harm, and (b) the practice is consistent with a guardianship plan.

We think that before you use restraints, if you're a guardian, you have to have guardianship plan that gives that authorization. We think that's protection for the vulnerable person, and we don't understand why you removed the coupling “and” between the two. I'd like some clarification from the parliamentary assistant.

The Vice-Chair: We'll get some clarification and then we'll go to Mrs Boyd.

Mr Tilson: This is another one of those sections where we took it out and you're putting it back in. We took “the” out and you're putting it back in. I guess that this is part of the issue with respect to this overall legislation, that in our consultations from day one was that one of the biggest complaints that we found with respect to this type of legislation, although all three parties did support the substitute decisions legislation, but one of the complaints was that things were too bureaucratic. They were too complicated.

We felt, Mrs Caplan, that it was very difficult for the applicant to identify the potential use of restraints before beginning the guardianship. It's very difficult to identify those, and we think that quite frankly there are too many procedural hurdles in the act and we felt this was one of them, and this is why we took it out.

Having to go back to the public guardian and trustee to amend the plan we feel is unreasonable. So for that reason we cannot accept your motion.

Mrs Caplan: As you know, our caucus and our party supported the substitute decision legislation, and we also felt that those things which were overly bureaucratic and overly intrusionary certainly should be streamlined. However, the requirement that a guardianship plan state how restraints are going to be used, we think is a protection for vulnerable persons and that you go too far, just as the legislation went too far in many areas previously around bureaucratic intrusion. We don't think that it is bureaucratic to require a guardianship plan to include the intention to restrain someone.

Over the years—and I'd remind you Mr Tilson and those who've been around for a while the horror stories that have been heard about the abuse in the use of restraints. A guardian has to file a plan, that's a requirement now, so you have that bureaucracy in place. You're not saying you don't have to file a plan; what you're saying is, if you're going to use restraints, the plan doesn't have to include restraints. We don't think it's unreasonable, given the potential for abuse, that a guard-

ianship plan must contain an agreement or an understanding of the intent to use restraints and under what circumstance. We think that's a reasonable protection. We think you go too far when you take it out. And while I hear your argument about streamlining, and I agree with you, in this case this is not streamlining because you already require guardianship plans. If a person's status changes from the time that they are first placed in guardianship to the point where they require restraint, it's not unreasonable to get that approval through the filing of a plan so that the intention is there. It's a little bit of accountability; it's protection for the vulnerable person. And it's not as though all of a sudden you're requiring a new plan; you're just amending a previous plan to say, "Here's the situation." It's some accountability and protection. I hope you'll reconsider.

The Chair: Mrs Boyd, I apologize for not taking it in order.

Mrs Boyd: It's hard when you're switching Chairs, isn't it?

We had many people come in front of us talking about this use of restraints without it being in the guardianship plan as a real concern. Three different local groups of the Canadian Mental Health Association came and talked to us and talked about how serious they thought that was, and the use of restraints, I would remind people, as under 66(10) in the act:

"The guardian shall not use confinement or monitoring devices or restrain the person physically or by means of drugs, and shall not give consent on the person's behalf to the use of confinement, monitoring devices or means of restraint unless,

"(a) the practice is essential to prevent serious bodily harm to the person or to others, or allows the person greater freedom or enjoyment; and

"(b) the practice is consistent with the guardianship plan."

The other groups were Legal Assistance of Windsor; the adult protective services; the Advocacy Centre for the Elderly; the Independent Living Centre. All of these people said to us that the unfettered use of restraints, without it being part of the guardian plan, is not acceptable, that there ought to be a plan, and it is a protection for the vulnerable people, for them to know that if this is not part of a guardianship plan that has already been approved by the public guardian and trustee, they must go back and say: "The circumstances have changed. We have had to change the plan because the person's condition changed and, therefore, we are changing the plan for this reason." There needs to be some way of monitoring and creating some accountability around the issue of restraint.

I would remind the members of the committee, you have read some of the horror stories that the research found for us. Many of you were sceptical about whether abuses really occur in some of these circumstances. We certainly heard you saying that. Maybe now you're convinced that in fact there does need to be a check and balance on the unfettered use of restraint. I would be very, very glad if you would accept the Liberal amendment.

Mrs Johns: I just wanted to remind the committee that there are some accountability measures on restraints in

the Nursing Homes Act and the old age act, I believe. It says that there has to be doctor's approval of it, that there has to be monitoring every 12 hours. There's a number of criteria which talked about the use of restraints and how the restraints can be imposed in other acts.

1530

Mrs Boyd: That may be true. It does not have any effect in home care, which is one of the most serious concerns that I have as we move more and more toward home care. The guardian of the person could well be the caregiver now that we've allowed caregivers to be the guardian of the person, and this is a really serious issue. You don't seem to get the picture here around how vulnerable people are to abuse in these circumstances. They are helpless; that's why they've been declared incapable. They have no way of escaping what is going on, they have no legal means and they have no physical means in most cases. The reality is that it is very tempting, when you are looking after someone, to restrain them, out of the very good reason that you think they'll be safer that way. And the real problem is that needs to be part of a plan of guardianship so that there is a check and balance on that.

The Nursing Homes Act and the Charitable Homes Act, and all of those things, do not deal with what happens to a person in their home when they are being cared for by a family member, or by a private caregiver. You have now given the possibility for that private caregiver to have the guardianship of the person. This is a minimal, please, a minimal protection for those people. I really urge you to understand how important it is.

The Chair: Thank you, Mrs Boyd. Mr Marchese?

Mr Marchese: No, my colleague has said it all.

The Chair: Those in favour of the motion?

Mr Marchese: Recorded.

Ayes

Boyd, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Parker, Tilson.

The Chair: The amendment is defeated. Shall section 43 pass, unamended? Carried.

Shall sections 44 to 52, inclusive, pass? Agreed.

Moving on to section 53, Mrs Boyd.

Mrs Boyd: I move that section 53 of the bill be amended by adding the following section to the Substitute Decisions Act, 1992:

"Register

"77.1(1) The public guardian and trustee shall establish and maintain a register of,

"(a) guardians of property;

"(b) guardians of the person;

"(c) attorneys under continuing powers of attorney; and

"(d) attorneys under powers of attorney for personal care.

"File to be opened in register

"(2) The public guardian and trustee shall open a file relating to a person and shall incorporate the file in the register when the first of the following events occurs:

"1. The public guardian and trustee becomes the person's statutory guardian of property.

"2. The court appoints someone as the person's guardian of property or guardian of the person.

"3. The person advises the public guardian and trustee that he/she has executed a continuing power of attorney or power of attorney for personal care and wishes the power of attorney to be recorded on the register.

"Contents of file

"(3) A file in the register relating to a person shall contain the following information that is in the possession of the public guardian and trustee:

"1. The name and address of the person.

"2. The name, address and telephone number of the person's,

"i. guardian of property, if any,

"ii. guardian of the person, if any,

"iii. attorney under a continuing power of attorney, if any,

"iv. attorney under a power of attorney for personal care, if any.

"3. For each person referred to in subparagraphs i to iv of paragraph 2, information concerning,

"i. how the person acquired his or her authority,

"ii. the nature and extent of the person's authority, and

"iii. the date that the person's authority took effect, terminated, or changed.

"Updating of register

"(4) The public guardian and trustee shall update the information contained in the register whenever he or she receives new information referred to in subsection (3).

"Access to register

"(5) The public guardian and trustee shall, in accordance with the regulations, provide information contained in the register under subsection (3) to a person who, by telephone or otherwise, requests the information."

The reason for this was brought to us by many of the health professionals, particularly those in emergency departments, whose real concern about all of this issue around substitute decision-making was how they are supposed to know someone has a continuing power of attorney for personal care.

But it is probably equally important in terms of property in some instances, because it would mean that if you had a suspicion that perhaps someone was in a situation where they were attempting to do something with someone's property and didn't have the authority to do it, you'd have a way of checking. It's particularly important in the guardianship issues so that people can easily check to see whether or not someone who purports to be a guardian is a guardian. There's very little way, for example, for a real estate agent necessarily; they might not know that sort of thing.

What we've done in this is to arrange this so that it does not put a great burden on the public guardian and trustee's office to update the information. Our section says very clearly that the updating of the registry is when the public guardian and trustee receives the information, not that they need to go out and get it and they wouldn't be held liable if they hadn't updated it and something had changed, but just that when people do update it, it happens. One would assume that official guardianship

issues would not be at stake here; it is the powers of attorney that would be the ones people would register if they were wise and not register if they weren't wise.

We would sincerely hope the government would agree that this would be a very good way of meeting some of the concerns that were raised with us about how we know if a person has a continuing power of attorney for property or for personal care.

The Chair: Mr Tilson, is the government supporting this amendment?

Mr Tilson: No, it's not, Mr Chairman. We have maintained all along, even during the debates on the existing legislation, that we had trouble with the registration system that was put forward by the government. We've maintained from the very outset, even during the last election, that we would be doing away with that.

At present, the Substitute Decisions Act requires the official guardian and public trustee to maintain a register of validated or registered powers of attorney for personal care and all guardianships as a public record. The purpose of this, as I understand it, is to assist third parties to locate designated substitute decision-makers.

This legislation has been criticized on the types of documents which can be registered. It has been criticized as being unnecessarily narrow. For example, there has been some interest expressed in a voluntary registration system allowing people to record their powers of attorney or living wills so information will be accessible in the event of incapacity.

As we have promised from the outset, the register provisions are being removed from the statute, so we clearly have a philosophical difference between this government and the NDP government. We have replaced this with a regulation-making authority governing the maintenance of the register because this will allow the necessary flexibility to explore options and make changes where warranted. There are many issues, technology, resources, liability etc, which we believe must be addressed before further steps can be taken.

As of proclamation of the current legislation, it was intended that the present legislation, as it stands now, would be limited to guardianship appointments and we will be looking at other options over time.

Mr Chairman, subject to the request of the committee, I'm going to ask Ms Spinks to elaborate on some of the things that I've said.

The Chair: It's up to you, Mr Tilson. I'm in your hands. We have one hour and 15 minutes to attempt in a best efforts—

Mr Tilson: This is an important issue, Mr Chairman.

The Chair: Fine. I'm just reminding you of the time element. Please proceed.

1540

Ms Spinks: I'm not sure, and Mrs Boyd can clarify this for me, whether or not it's the placing of this in regulations that causes you concern, that perhaps there will not be a register. Is this your concern?

Mrs Boyd: Exactly.

Ms Spinks: It certainly isn't the intention of that change to do away with a register. In fact, what happened during the implementation of the Substitute Decisions Act, as I think you pointed out, was that there was

interest expressed in having the register serve a wider purpose than it does now, and I think the government is interested in looking at that as the previous government was interested in looking at that as well.

But having discussed with—for example, the province of British Columbia is currently looking at the issue of the creation of a register for powers of attorney and there are numerous complications that need to be settled before going ahead with that, which is why the regulations will allow that to be done over time, but that wouldn't be the case if it was placed in the statute immediately, because there are concerns. BC has run into a lot of issues around liability of the party holding the information, what it is you give out, how you give it out, how it's accessed, how health practitioners get it on a 24-hour-a-day, seven-day-a-week basis and numerous other things of that nature that need to be explored, how the documents get verified. When it's registered, is it saying it's a valid document, which may not be the case? It could be forged. It could have been made with lack of capacity.

There are a lot of issues to consider, which is why it's being done through regulation, but the intent upon proclamation of this would be that what's there now would continue, at least for the interim.

Mrs Boyd: I wonder if we could have that repeated into the record. What is there now will be continued until the new regulation is put in place, even though there's no legislative authority to do it now?

Ms Spinks: There is regulation-making authority to create the register, and those regulations, it's proposed, will basically contain what is currently in section 78 of the statute, subject of course to validated powers of attorney not being there because they're not applicable any more, in order that over time the issue of enlarging it can be explored.

Mrs Boyd: Both counsel and the parliamentary assistant are well aware that the other option for them to maintain their flexibility would be not to proclaim this section until they had ironed out all those problems, proclaim the rest of the bill and not proclaim this section, and then it would be a requirement in the legislation rather than simply being regulation-making power.

Our concern, as it is with all these other regulation situations, is that regulations are made by the government in power, whoever that may be, over time, and can be changed at will by the government in power, often are changed to deal with resource issues as opposed to issues around protection of the public, and I really urge the government to change its mind.

The Chair: Thank you, Mrs Boyd. Shall the amendment carry? Oh, sorry, Mr Brown.

Mr Michael Brown: I just want to be clear. What you're talking about is that the reason you do not want to accept Mrs Boyd's amendment is the fact that you are looking at ways to expand the information provided and not delete information, and that is your undertaking to us today?

Ms Spinks: Correct.

Mr Michael Brown: We will not be supporting the NDP motion on that basis, as long as that's the understanding, because—

Mrs Boyd: Your faith is touching.

Mr Michael Brown: It's more than faith in this case.

The Chair: Shall the amendment pass? Recorded.

Ayes

Boyd, Marchese.

Nays

Michael Brown, Doyle, Grandmaître, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: The motion is defeated. I'd ask whether section 53 passes. Carried.

Section 54, Mr Tilson.

Mr Tilson: I move that section 78 of the Substitute Decisions Act, 1992, as set out in section 54 of the bill, be amended by adding the following subsection:

"Use of prescribed form

"(3.1) An assessor who performs an assessment of a person's capacity shall use the prescribed form in performing the assessment."

The Chair: Agreed? Carried.

Mrs Boyd: I move that section 78 of the Substitute Decisions Act, 1992, as set out in section 54 of the bill, be amended by adding the following subsection:

"Confidentiality

"(5) An assessor shall not disclose any information acquired by the assessor in performing an assessment, except as authorized or required by this act."

The purpose here is to answer the concerns that were raised by people who came in front of us that while there were requirements of others around confidentiality, there were not requirements around assessors, and that it is essential that people be sure their confidential information cannot be released.

Mr Tilson: We will not be supporting this resolution. We don't believe this supports anything. If you look at 90(e.5), this will create rules governing confidentiality. In fact, if you look at a later government motion on page 48, we believe that must be enacted by virtue of that motion, assuming the committee gives support to that motion.

We have committed to consult with the Information and Privacy Commissioner. I might add, we had earlier discussion, in the first week at least when the commissioner came here, and he's indicated to the Attorney General that he's satisfied with the amendment I'm referring to on page 48.

The Chair: Shall the amendment carry?

Ayes

Boyd, Michael Brown, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: The motion is defeated.

Shall section 54, as amended, pass? Carried.

Shall sections 55, 56, 57 and 58 pass? Carried.

We're moving on to section 59, and Mr Tilson.

Mr Tilson: I move that section 59 of the bill be amended by adding the following subsection:

"(3) Section 89 of the act is amended by adding the following subsection:

“Offence: personal information

“(7) A person who obtains personal information under the authority of a regulation made under subclause 90(1)(e.4)(ii) and who contravenes a regulation made under clause 90(1)(e.5) is guilty of an offence and is liable, on conviction, to a fine not exceeding \$10,000.”

This is a part of a series of amendments relating to the regulation authority for the disclosure of information. This particular aspect was suggested by the privacy commissioner and enables a breach of this section to be considered as an offence.

Mrs Boyd: I understand that subclause 90(1)(e.4)(ii) does not include assessors, and that was the purpose of our previous motion. If this subclause included assessors, we would not have a concern. Mr Tilson encouraged us all to believe that in fact these regulations would cover confidentiality from assessors. They do not.

Mr Tilson: As indicated, we will have regulations, which the commissioner has been satisfied we will put forward, to satisfy that concern.

The Chair: Mr Brown, the clerk has advised that you must move your amendment, which is on 41a, before we deal with the motion of Mr Tilson. On page 41a, ladies and gentlemen, is an amendment by Mr Brown to the amendment on the floor.

1550

Mr Michael Brown: I move that the government motion on page 41 be amended by striking out “subclause 90(1)(e.4)(ii) in the second line and substituting “subclause 90(1)(e.4)(i).”

The reason for that is to address the concern that Mrs Boyd has just put forward, and that would be to include assessors in this definition. I really think the reasoning is self-evident, Mr Tilson. One of the things I think you would want to note is that our concern is, you have under your regulation a power, the ability to broaden the class of people that would be qualified to be assessors. Those people would not necessarily be in a regulated health profession and, because of that, we think this is extremely important to put in the legislation.

The Chair: Mr Tilson, does the government support the amendment we're speaking to now?

Mr Tilson: I can only respond that generally they are, and I refer to the Code of Ethics and Standards of Conduct of the capacity assessment office dated June 30, 1995, page 3, which deals with the issue of confidentiality: “Capacity assessors shall (1) keep in confidence any information revealed during the course of an assessment relationship and release it only with the written consent of the person or the person's guardian or attorney, or when ordered to do so by a court or authorized by law; (2) not to be considered to be in breach of this code and standards when reporting an allegation to the public guardian and trustee that a person is incapable of managing property or personal care and that serious adverse effects are occurring or may occur as a result; (3) avoid indiscreet conversations, even with a spouse, friend or family, about persons or requesters even when not named or otherwise identified; (4) obtain written consent from the person or the person's guardian or attorney in the capacity assessment office for any recording or filming of a person's assessment for research, evaluation or eviden-

tial purposes and the subsequent use of any such record or film.”

So we don't believe that we need to create an offence for assessors. They are professionals, governed by the confidentiality rules at large, which I just read to you, and we believe that under those circumstances that's adequate. I don't think I can add anything further to that, Mr Chairman.

The Chair: If there is no other comment, shall the—

Mr Michael Brown: Mr Chair, we're having some difficulty over here. The education and training of assessors is no longer something that's required. What objection can you possibly have to including them in this section?

Mr Tilson: I don't know why you'd do that, because doctors don't have an offence provision.

Mr Michael Brown: But there's a regulated body.

Mr Tilson: It only creates a different standard, so we really don't think it's necessary.

The Chair: Shall the motion of Mr Brown to amend the motion of Mr Tilson pass?

Ayes

Boyd, Michael Brown, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: The motion is defeated.

Shall the motion of Mr Tilson, unamended, pass?
Carried.

Shall section 59, as amended, pass? Carried.

We are moving to section 60, which is on page 42.
Mrs Boyd.

Mrs Boyd: It's withdrawn, sir. It's consequent.

The Chair: Page 42 is withdrawn.

Mr Tilson, you are next.

Mr Tilson: I move that clause 90(e.3) of the Substitute Decisions Act, 1992, as set out in subsection 60(3) of the bill, be struck out and the following substituted:

“(e.3) for the purpose of sections 38 and 39 of the Freedom of Information and Protection of Privacy Act, authorizing the public guardian and trustee or an institution that has responsibilities related to assessments of capacity to collect personal information, directly or indirectly, for a purpose relating to this act;”

This was reviewed with the Information and Privacy Commissioner and he indicated that he was satisfied with this.

The Chair: Is there any comment in regard to the proposed motion? All those in favour of the motion?
Carried. Mrs Boyd.

Mrs Boyd: I move that subclause 90(e.4)(i) of the Substitute Decisions Act, 1992, as set out in subsection 60(3) of the bill, is repealed and the following substituted:

“(i) to an assessor, if the information is relevant to an assessment of capacity being performed by the assessor and the disclosure of the information is consented to by,

“(A) the person being assessed, if the person is capable of consenting,

“(B) the guardian of property or guardian of the person of the person being assessed, or the person’s attorney under a continuing power of attorney or power of attorney for personal care, if the person is not capable of consenting and has a guardian or attorney, or

“(C) the court, on application, if sub-subclauses (A) and (B) do not apply,”

The purpose of this is to assure that assessors should only be given access to private information that is relevant to the assessment, if they are authorized by the appropriate person: obviously, the person if they’re capable; the guardian or power of attorney if not; and the court if none of those apply.

The Chair: Mr Tilson, does the government support this motion?

Mr Tilson: No, Mr Chairman, we’re not supporting this motion. We believe that this is overly cumbersome and bureaucratic. It was not required by the Information and Privacy Commissioner, so we’ll not be supporting it.

The Chair: If there’s no other comment, shall the motion pass?

Ayes

Boyd, Michael Brown, Grandmaître, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: The motion is defeated.

Proceeding to the government motion regarding 60(3)—I’m sorry, is that the government or is that Mrs Boyd?

Mrs Boyd: Number 45 is government.

The Chair: Yes, I was right. Mr Tilson.

Mr Tilson: I move that subclause 90(e.4)(ii) of the Substitute Decisions Act, 1992, as set out in subsection 60(3) of the bill, be struck out and the following substituted:

“(ii) to a person who makes a statement in the prescribed form indicating that the person has made or intends to make an application to appoint a guardian of property or guardian of the person, if the information is relevant to the application, or”

This makes it an offence to breach this section. This has been discussed with the Information and Privacy Commissioner and he has indicated that he supports it.

The Chair: Shall this motion carry? Carried.

Mrs Boyd, page 46.

Mrs Boyd: I believe that this motion is then out of order, since we just carried the government motion.

The Chair: It’s withdrawn?

Mrs Boyd: Yes.

The Chair: Thank you. Mr Tilson.

Mr Tilson: I think the Liberal motion is the next one. Something happened to it.

The Chair: Yes, there is a Liberal motion inserted here, 46a. I would think that would be out of order at this stage. Mr Brown?

Mr Michael Brown: I was looking at it carefully and would agree.

The Chair: Thank you. Mr Tilson, you have two matters.

Mr Tilson: This is on page 47. I move that clause 90(e.5) of the Substitute Decisions Act, 1992, as set out in subsection 60(3) of the bill, be amended by striking out “use and disclosure” in the first line and substituting “use, disclosure and retention.”

This is a technical change and it is being made to satisfy concerns of the Information and Privacy Commissioner.

The Chair: Shall it carry? Carried.

Page 48, Mr Tilson.

1600

Mr Tilson: I move that section 60 of the bill be amended by adding the following subsection:

“(4) Section 90 of the act is amended by adding the following subsection:

“Regulations under clause (1)(e.4)

“(2) A regulation may not be made under clause (1)(e.4) unless a regulation has been made under clause (1)(e.5).”

I challenge anyone watching this thing to understand what I just said. However, the purpose of this amendment is to prevent any disclosure regulation being made in the absence of a confidentiality regulation.

The Chair: Shall the motion carry? Carried.

Mr Brown, your motion deals with an issue that we have discussed at length. Would you please proceed.

Mr Michael Brown: I move that section 60 of the bill be amended by adding the following subsection:

“(4) Section 90 of the act is amended by adding the following subsection:

“When regulations come into force

“(2) A regulation comes into force on the day that is the later of the day that is four weeks after the day it is published in the Ontario Gazette and the day it would come into force absent this subsection.”

The explanation and reason for that amendment has, as you say, been canvassed widely in this committee. That is to say that people have no ability to know what regulations are made. By doing this, it essentially gives the four-week time period for people to see what that regulation is, what effect it might have, and if they have some objection, they at least have some opportunity to bring that forward.

If the law of unintended consequences comes into effect and the government hasn’t thoroughly considered something, they have the opportunity to bring it to the government’s attention. We think it’s just good public policy for the government to let people know what it has done before they require people to do it. I think it’s as clear as that. We can see absolutely no reason that the committee would not assent to this.

Mr Marchese: Are you going to change your mind? No? Okay, then.

Mr Tilson: Mr Chairman—

The Chair: Yes, Mr Tilson? I assume you’re not in favour of this.

Mr Tilson: No.

The Chair: And we’ve heard that argument before. We know the reasons.

Mr Tilson: We’ve heard it for about half an hour before.

Mr Marchese: And you’re going to add to that.

Mr Tilson: No.

The Chair: Okay, those in favour of the amendment? Recorded?

Ayes

Boyd, Michael Brown, Marchese.

Nays

Doyle, Guzzo, Johns, Klees, Leadston, Parker, Tilson.

The Chair: That's the completion of the amendments. Shall section 60, as amended, pass? Carried.

Sixty-one, Mr Tilson.

Clerk of the Committee: Section 61, page 50.

Mr Tilson: I've run out of paper. There was a motion that was set down by the NDP, I think.

The Chair: I meant section 61, sorry.

Mrs Boyd: No, section 61 is the charitable institutions. We're going back to the consequent amendments. I think we need to go back to section 14 of the Substitute Decisions Act for the section that was set down.

Interjection: What page?

Mrs Boyd: It was page 20, replacement.

The Chair: Is there unanimous consent to vary the order of business?

Mrs Johns: Unanimous consent.

Clerk of the Committee: You'll need unanimous consent to go back. What we can do is postpone the section and then, when we go back to the postponed sections, take them in order.

Mr Tilson: Mr Chair, on a point of order: To be fair, this was set down by the NDP; we agreed to that. Perhaps it would be appropriate to deal with that now.

Mr Marchese: Yes. Let's just do it, as long as we agree.

Mrs Boyd: Could we deal with it so that substitute decisions is finished?

The Chair: Okay. What are we dealing with, Mrs Boyd?

Mrs Boyd: I move that section 14 of the bill be amended by adding the following subsection:

"(2.1) Paragraph 1 of subsection 24(2) of the act is repealed."

That means that—

Mr Tilson: Agreed.

Mrs Boyd: Could we tell people what it means? This is the issue around the person being guardian of property and also being guardian of care. We agreed.

The Chair: Thank you. Could you withdraw the previous motion and on page 20?

Mrs Boyd: I withdraw the previous motion.

The Chair: Mr Tilson.

Mrs Johns: Are we on section 61, page 50?

The Chair: Page 20, I thought.

Mrs Boyd: We did page 20. Unanimity, Mr Chair; you're not used to seeing it.

Mr Tilson: It's been a long day, Mr Chairman.

Clerk of the Committee: We're on section 14 right now. We need section 14.

The Chair: The amendment carried on section 14.

Shall section 14, as amended, carry? Carried.

Now we're back to page 50, are we, section 61?

Mrs Johns: I move that the definition of "substitute decision-maker" in section 1 of the Charitable Institutions Act, as set out in subsection 61(1) of the bill, be struck out and the following substituted:

"substitute decision-maker," in relation to a resident of an approved charitable home for the aged, means,

"(a) the person who would be authorized under the Health Care Consent Act, 1995, to give or refuse consent to a treatment on behalf of the resident if the resident were incapable with respect to the treatment under that act, or

"(b) the person who would be authorized under the Health Care Consent Act, 1995, to make a decision concerning a personal assistance service on behalf of the resident if the resident were incapable with respect to the personal assistance service under that act."

What we're doing here is we're recognizing that in some instances the involvement of both types of substitutes is necessary. This was suggested by the Advocacy Centre for the Elderly.

The Chair: Shall this amendment pass? It's carried.

Mrs Johns: On page 51, I move that clause 9.15(d) of the Charitable Institutions Act, as set out in subsection 61(2) of the bill, be struck out and the following substituted:

"(d) an opportunity to participate fully in the development and revision of the resident's plan of care is provided to,

"(i) the resident,

"(ii) if the resident is mentally incapable, his or her substitute decision-maker described in clause (a) of the definition of 'substitute decision-maker' in section 1 and, unless it is the same person, his or her substitute decision-maker described in clause (b) of the definition of 'substitute decision-maker' in section 1, and

"(iii) such other person as the persons mentioned in subclauses (i) and (ii) may direct; and"

We're recognizing here that plans of care may involve either treatment or personal assistance services.

The Chair: Any comments on the proposed amendment? Shall this amendment pass? Carried.

Mrs Johns: Page 52. I move that subsection 9.17(1.1) of the Charitable Institutions Act, as set out in subsection 61(5) of the bill, be struck out and the following substituted:

"Same

"(1.1) The notice must be given to,

"(a) each resident of the approved charitable home for the aged;

"(b) if the resident is mentally incapable, his or her substitute decision-maker described in clause (a) of the definition of 'substitute decision-maker' in section 1 and, unless it is the same person, his or her substitute decision-maker described in clause (b) of the definition of 'substitute decision-maker' in section 1, and

"(c) such other person as the persons mentioned in clauses (a) and (b) may direct."

We're giving notice of rights to people in this specific time frame and we're taking into effect substitute decision-makers who may have the decision-making for treatment or personal assistance services.

The Chair: Shall the motion carry? Carried.

Mrs Johns: Page 53. I move that paragraph 2 of subsection 9.19(2) of the Charitable Institutions Act, as set out in subsection 61(6) of the bill, be struck out and the following substituted:

"2. If a resident of the home is mentally incapable, any of his or her substitute decision-makers."

This allows either substitute decision-maker to request a residents' council in a charitable home.

The Chair: Shall the motion carry? Carried.

Mrs Johns: Page 54. I move that paragraphs 2 and 3 of subsection 9.19(3) of the Charitable Institutions Act, as set out in subsection 61(7) of the bill, be struck out and the following substituted:

"2. If a resident of the home is mentally incapable, any of his or her substitute decision-makers.

"3. A person selected by the resident or, if the resident is mentally incapable, by any of his or her substitute decision-makers."

This section is talking about who may be a member of the residents' council, and it can be either substitute decision-maker.

The Chair: Shall the amendment carry? Carried.

Shall section 61, as amended, carry? Carried.

Shall sections 62 to 67, inclusive, carry? Carried.

Section 68.

1610

Mrs Johns: I'm on page 55. I move that the definition of "substitute decision-maker" in section 1 of the Homes for the Aged and Rest Homes Act, as set out in subsection 68(1) of the bill, be struck out and the following substituted:

"substitute decision-maker,' in relation to a resident, means,

"(a) the person who would be authorized under the Health Care Consent Act, 1995, to give or refuse consent to a treatment on behalf of the resident if the resident were incapable with respect to the treatment under that act, or

"(b) the person who would be authorized under the Health Care Consent Act, 1995, to make a decision concerning a personal assistance service on behalf of the resident if the resident were incapable with respect to the personal assistance service under that act."

We're talking about substitute decision-makers under the homes for the aged, and we're recognizing that a person may have two substitute decision-makers, one for treatment and one for personal assistance. This was supported by the Advocacy Centre for the Elderly.

The Chair: Shall the amendment carry? Carried.

Mrs Johns: Page 56. I move that clause 19.5(d) of the Homes for the Aged and Rest Homes Act, as set out in subsection 68(2) of the bill, be struck out and the following substituted:

"(d) an opportunity to participate fully in the development and revision of the resident's plan of care is provided to,

"(i) the resident,

"(ii) if the resident is mentally incapable, his or her substitute decision-maker described in clause (a) of the definition of 'substitute decision-maker' in section 1 and, unless it is the same person, his or her substitute decision-maker described in clause (b) of the definition of 'substitute decision-maker' in section 1, and

"(iii) such other person as the persons mentioned in subclauses (i) and (ii) may direct; and"

This motion gives attention to the plan of care and it says that there may be two substitute decision-makers who have to receive the plan of care, the one for treatment or personal assistance services.

The Chair: Shall the amendment carry? Carried.

Mrs Johns: Page 57. I move that subsection 30.4(1.1) of the Homes for the Aged and Rest Homes Act, as set out in subsection 68(5) of the bill, be struck out and the following substituted:

"Same

"(1.1) The notice must be given to,

"(a) each resident of the home or joint home, as the case may be;

"(b) if the resident is mentally incapable, his or her substitute decision-maker described in clause (a) of the definition of 'substitute decision-maker' in section 1 and, unless it is the same person, his or her substitute decision-maker described in clause (b) of the definition of 'substitute decision-maker' in section 1; and

"(c) such other person as the persons mentioned in clauses (a) and (b) may direct."

This is the notice of rights for both substitute decision-makers.

The Chair: Shall the amendment carry? Carried.

Mrs Johns: Page 58. I move that paragraph 2 of subsection 30.6(2) of the Homes for the Aged and Rest Homes Act, as set out in subsection 68(6) of the bill, be struck out and the following substituted:

"2. If a resident of the home or joint home, as the case may be, is mentally incapable, any of his or her substitute decision-makers."

This is a request to have a residents' council, and either of the individual substitute decision-makers can request that.

The Chair: Shall the amendment carry? Carried.

Mrs Johns: Page 59. I move that paragraphs 2 and 3 of subsection 30.6(3) of the Homes for the Aged and Rest Homes Act, as set out in subsection 68(7) of the bill, be struck out and the following substituted:

"2. If a resident of the home or joint home, as the case may be, is mentally incapable, any of his or her substitute decision-makers.

"3. A person selected by the resident or, if the resident is mentally incapable, by any of his or her substitute decision-makers."

Who can be a member of the residents' council? Either the resident or either of his substitute decision-makers.

The Chair: Shall the amendment carry? Carried.

Shall section 68, as amended, carry? Carried.

Shall sections 69 and 70 carry? Carried.

Proceeding to 71.

Mrs Johns: Page 60.

The Chair: If I may suggest, so you don't lose your voice, I don't know whether the comment is necessary, simply because they've reread it. If they have an objection, I'm sure they'll raise it. Proceed, please.

Mrs Johns: Okay, I'll go without the comment for a little while if you'd like.

Mr Marchese: Oh, no, no. We like the comment. If it doesn't affect your voice, we think you should continue.

Mrs Johns: He's giving me training. I need that kind of direction.

Mr Marchese: We'll be finished in 15 minutes. Don't worry.

The Chair: I leave it up to you.

Mrs Johns: We'll have lots of time to be finished by 5, I think. I'm on page 60.

I move that the definition of "substitute decision-maker" in subsection 2(1) of the Long-Term Care Act, 1994, as set out in subsection 71(1) of the bill, be struck out and the following substituted:

"substitute decision-maker," in relation to a person to whom a record, information or an approved agency's decision relates, means,

"(a) the person who would be authorized under the Health Care Consent Act, 1995, to give or refuse consent to a treatment on behalf of the person to whom the record, information or approved agency's decision relates, if that person were incapable with respect to the treatment under that act, or

"(b) any other person who is lawfully authorized to make a decision concerning a community service on behalf of the person to whom the record, information or approved agency's decision relates."

This relates to the substitute decision-maker in the Long-Term Care Act, and we need to allow for the expansion of personal assistance services for community service recipients.

The Chair: Shall the amendment carry? Carried.

Mrs Johns: On page 61, I move that subsection 71 of the bill be amended by adding the following subsection:

"(1.1) Clause 22(4)(b) of the act is repealed and the following substituted:

"(b) if the person who is the subject of the plan of service is mentally incapable, the person or persons who are lawfully authorized to make a decision on his or her behalf concerning the community services in the plan of service; and"

This is the plan of care. This was recommended by the Ontario Nursing Home Association, the College of Nurses and the ad hoc commission, and we're giving an expansion of the role for personal assistance services.

The Chair: Shall the amendment carry? Carried.

Mrs Johns: I'm on page 62. I move that section 71 of the bill be amended by adding the following subsection:

"(2.1) Clause 25(1)(b) of the act is repealed and the following substituted:

"(b) if the person receiving the community service is mentally incapable, the person who is lawfully authorized to make a decision on his or her behalf concerning the community service; and"

This is about notice of rights, and we're trying to make the changes to be consistent with the definitions of substitute, which may include personal assistance services.

The Chair: Shall the amendment carry? Carried.

Mrs Johns: I move that clause 32(2)(g.2) of the Long-Term Care Act, 1994, as set out in subsection 71(6) of the bill, be amended by striking out "plan" in the sixth line and substituting "service."

The Chair: Shall the amendment carry? Carried.

Mrs Johns: Page 64. I move that subsection 39(4) of the Long-Term Care Act, 1994, as set out in subsection

71(17) of the bill, be struck out and the following substituted:

"Who must be given notice

"(4) A notice under clause (3)(a) or (b) or a copy of a decision under clause (3)(c) shall be given,

"(a) to the person to whom the decision relates; and

"(b) if the person to whom the decision relates is mentally incapable, to the person who is lawfully authorized to make a decision on his or her behalf concerning the community service."

This talks about a notice of decision regarding a complaint to a board, and this change is to be flexible for the extension of a personal assistance scheme in the community.

The Chair: Shall this amendment pass? Carried.

Shall section 71, as amended, carry? Carried.

Section 72.

Mrs Johns: Page 65. I move that the definition of "rights adviser" in subsection 1(1) of the Mental Health Act, as set out in subsection 72(4) of the bill, be amended by adding "but does not include a person involved in the direct clinical care of the patient to whom the rights advice is to be given" after "facility" in the fifth line.

This had strong support throughout the hearings. We heard about concerns of conflict of interest from the Ontario Advocacy Commission, the Advocacy Centre for the Elderly, the Family Mental Health Alliance, the Kingston AIDS Project, the Family Association for Mental Health Everywhere and the Queen Street Patients Council.

The Chair: Shall this amendment carry? Carried.

Mrs Johns: Page 66. I move that clause 35(3)(e.4) of the Mental Health Act, as set out in subsection 72(11) of the bill, be amended by striking out "plan" in the last line and substituting "service."

The Chair: Shall this amendment carry? Carried.

Mrs Johns: Page 67. I move that subsections 72(22) and (23) of the bill be struck out.

This talks about the appointment of representatives for records under the Mental Health Act, and this was supported by ARCH, ACE and the PPAO. It permits the Consent and Capacity Board to appoint someone else as the representative for records and allows for conditions to imposed by the board only with the approval of the incapable person.

1620

The Chair: Shall this amendment carry? Mr Marchese.

Mr Marchese: I just have a brief comment to that motion. The effect of this is that it restores "if the patient approves" rather than "if the patient does not object" and we support the language that speaks of "if the patient does not object."

I want to refer to what the Canadian Mental Health Association from Ottawa-Carleton said about this, and the Canadian Mental Health Association from Waterloo, where they say, "Substituting the words 'does not object' for the words 'if the patient approves' turns this provision from one requiring explicit approval to one requiring only implicit approval. This change could result in the disclosure of records that would not be in the best interests of the patient." We support that particular argument, so if the effect of this motion is to restore the language "if the

patient approves" rather than "if the patient does not object," then we disagree with this.

Ms Perun: The purpose of the motion is to go back to what the Mental Health Act used to say—

Mr Marchese: Which was "if the patient approves."

Ms Perun: Yes, that's right.

Mr Marchese: Right. And I just read out—

Mr Tilson: So what's your point?

Mr Marchese: I'm sorry. The two associations that I read, did I misunderstand this? In what I read to you, did I say something that says something different?

Mrs Johns: I'm confused. Can you read that again to us?

Mr Marchese: The two organizations have said the following: "Substituting the words 'does not object' for the words 'if the patient approves'"—which is what you're doing with this motion, is it not?—"turns this provision from one requiring explicit approval to one requiring only implicit approval. This change could result in the disclosure of records that would not be in the best interests of patients." So they are saying they would prefer language that says "if the patient approves."

Ms Perun: That's right. They would prefer the harder onus, to have actual approval and what Bill 19 did was change it to simply "does not object," which is a lesser obligation. This motion to amend simply goes back to what it was under the Mental Health Act.

The Chair: Shall the amendment carry? Carried. Mrs Johns.

Mrs Johns: This is government motion 67a. It needs unanimous consent because I'm touching a section of the act that we didn't open up previously. This is in response to—

The Chair: Do you want to read it into the record, please?

Mrs Johns: Yes, but I just want to tell them so I can get unanimous consent that this is in response to something Mrs Caplan wanted to have happen.

Mr Michael Brown: Then we're all ears.

Mrs Johns: I move that section 72 of the bill be amended by adding the following subsection:

"(28.1) The act is amended by adding the following section:

"Counsel for patients under 16

"43. If a patient who is less than 16 years old is a party to a proceeding before the board under section 13 or 39 and does not have legal representation,

"(a) the board may direct the children's lawyer to arrange for legal representation to be provided for the patient; and

"(b) the patient shall be deemed to have capacity to retain and instruct counsel."

Under the sections that are quoted that talk about parent consent for a child and involuntary admission, what we're doing here is giving the opportunity that the board may direct the children's lawyer to arrange legal counsel for the child.

The Chair: The amendment is out of order as section 43 of the Mental Health Act is not opened in Bill 19. It will take unanimous consent. Is there such consent? Shall the motion pass? Agreed. Proceed, Mrs Johns.

Mrs Johns: Page 68.

I move that clause 81(1)(h) of the Mental Health Act, as set out in subsection 72(33) of the bill, be struck out and the following substituted:

"(h) governing designations by psychiatric facilities or the minister of persons or categories of persons to perform the functions of a rights adviser under this act and governing the revocation of such designations, including,

"(i) requiring, permitting or prohibiting designations and revocations,

"(ii) prescribing who may make designations and revocations on behalf of a psychiatric facility,

"(iii) prescribing qualifications or requirements that a person must meet before he or she may be designated by a psychiatric facility and qualifications or requirements that a person must meet before he or she may be designated by the minister, and

"(iv) prescribing obligations in relation to the provision of information about designations and revocations that have been made."

The new wording more clearly sets out the powers the government has to direct the designation, qualifications and training of rights advisers.

The Chair: Shall this amendment pass? Carried. Mrs Johns.

Mrs Johns: It's Mrs Caplan, but I'd like to make one suggestion before you go ahead. I don't know if I can make a friendly amendment, but we're prepared to accept the next one and we're also prepared to have (e.3) in there, if you'd like to look at that and see if you'd like to have that in there also.

The Chair: This is page 68a we're talking about?

Mrs Johns: Yes.

Mrs Caplan: Because I've been at the Board of Internal Economy, and around here it's kind of interesting to be in two places at once, could you just give me a minute to find my spot in the act? What page in the act are we on? Page 48. That helps.

Mrs Johns: We want (e.3) included also.

Mrs Caplan: I accept that. Shall I read it in now?

The Chair: Mrs Caplan, are you going to read it into the record with the change?

Mrs Caplan: Yes.

I move that subsection 72(33) of the bill be amended by adding the following clause to subsection 81(1) of the Mental Health Act:

"(k.3) governing the use, disclosure and retention of personal information obtained from the disclosure, transmission or examination of a clinical record under clause 35(3)(e.3), (e.4) or (e.5)."

This amendment puts the same regulation-making power regarding the protection of personal information as it did under the Substitute Decisions Act. It's consistent, it's important, and we think it was probably just an oversight. I hope it was just an oversight. I am delighted that the government is supporting us, because we think that the protection of personal privacy of medical records is something that we can't be too careful about. It's an obligation that we all have, and I'm pleased the government can support this one.

The Chair: Shall the amendment carry? Carried.

Shall section 72, as amended, and section 73 carry? Carried.

Moving up to section 74, Mrs Johns.

Mrs Johns: I'm on page 69.

I move that the definition of "substitute decision-maker" in subsection 1(1) of the Nursing Homes Act, as set out in subsection 74(1) of the bill, be struck out and the following substituted:

"substitute decision-maker,' in relation to a resident, means,

"(a) the person who would be authorized under the Health Care Consent Act, 1995 to give or refuse consent to a treatment on behalf of the resident if the resident were incapable with respect to the treatment under that act, or

"(b) the person who would be authorized under the Health Care Consent Act, 1995 to make a decision concerning a personal assistance service on behalf of the resident if the resident were incapable with respect to the personal assistance service under that act."

Under the Nursing Homes Act we're suggesting that a person may have two substitute decision-makers, one for treatment and one for personal assistance services.

The Chair: Shall the amendment pass? Carried.

Mrs Johns: I'm on page 70.

I move that clause 20.10(d) of the Nursing Homes Act, as set out in subsection 74(2) of the bill, be struck out and the following substituted:

"(d) an opportunity to participate fully in the development and revision of the resident's plan of care is provided to,

"(i) the resident,

"(ii) if the resident is mentally incapable, his or her substitute decision-maker described in clause (a) of the definition of 'substitute decision-maker' in subsection 1(1) and, unless it is the same person, his or her substitute decision-maker described in clause (b) of the definition of 'substitute decision-maker' in subsection 1(1), and

"(iii) such other person as the persons mentioned in subclauses (i) and (ii) may direct; and"

This talks about the plan of care and takes into effect that a person may have two substitute decision-makers and that they plus the resident could see the plan of care.

The Chair: Shall the amendment pass? Carried.

Mrs Johns: I'm on page 71.

I move that subsection 20.16(1.1) of the Nursing Homes Act, as set out in subsection 74(5) of the bill, be struck out and the following substituted:

"Same

"(1.1) The notice must be given to,

"(a) each resident of the nursing home;

"(b) if the resident is mentally incapable, his or her substitute decision-maker described in clause (a) of the definition of 'substitute decision-maker' in subsection 1(1) and, unless it is the same person, his or her substitute decision-maker described in clause (b) of the definition of 'substitute decision-maker' in subsection 1(1); and

"(c) such other person as the persons mentioned in clauses (a) and (b) may direct."

This talks about the notice of rights in the Nursing Homes Act, and it takes into effect the resident and the possibility of two substitute decision-makers.

The Chair: Shall the amendment carry? Carried.

Mrs Johns: On page 72.

I move that paragraph 2 of subsection 29(2) of the Nursing Homes Act, as set out in subsection 74(6) of the bill, be struck out and the following substituted:

"2. If a resident of the nursing home is mentally incapable, any of his or her substitute decision-makers."

This is talking about who can request a residents' council in a nursing home and it's the resident or his substitute decision-maker, either one.

The Chair: Shall the amendment carry? Carried.

Mrs Johns: On page 73.

I move that paragraphs 2 and 3 of subsection 29(3) of the Nursing Homes Act, as set out in subsection 74(7) of the bill, be struck out and the following substituted:

"2. If a resident of the nursing home is mentally incapable, any of his or her substitute decision-makers.

"3. A person selected by the resident or, if the resident is mentally incapable, by any of his or her substitute decision-makers."

This talks about who can be a member of the residents' council in a nursing home.

The Chair: Carried? Agreed.

Shall sections 75 to 79, inclusive, carry? Carried.

Mrs Johns: The amended section has to be carried also.

The Chair: I'm sorry. I didn't ask, shall section 74, as amended, carry? Carried.

Shall the long title of the bill carry?

Mrs Caplan: No, I'd like to have some debate on this.

The Chair: We have some time, Mrs Caplan.

Mrs Caplan: That's for Mr Tilson, who seemed worried that we weren't going to get—

Mr Tilson: I was sceptical.

Mrs Caplan: That's right. He was so worried that we weren't going to get through this legislation by 5 o'clock, and we have half an hour to go. So I wanted to give him an opportunity to apologize to committee members for cutting our lunchtime by the half-hour that is remaining on the clock, because of his scepticism that we weren't going to get through the bill. Is there anything you'd like to say?

Mr Tilson: Let's put it this way. I'm just amazed.

Interjections: Agreed.

The Chair: That's carried?

Shall the long title of the bill carry? Carried.

Shall the bill, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

It is ordered that the Chair report Bill 19, as amended, to the House. I don't believe it. You surprise me indeed.

I'd like to thank all the staff involved and the technicians for their assistance. I'd like to thank each member of the committee for their patience and invariable good humour. I'd especially like, on behalf of the Vice-Chairman and myself, to thank the opposition, all distinguished and experienced parliamentarians, who did not take advantage of the two novice chairmen making their first voyage on this bill. I thank you very much.

The committee adjourned at 1634.

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- Ramsay, David (Timiskaming L)
- *Tilson, David (Dufferin-Peel PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Brown, Michael A. (Algoma-Manitoulin L) for Mr Chiarelli
Caplan, Elinor (Oriole L) for Mr Conway
Grandmaître, Bernard (Ottawa East / -Est L) for Mr Ramsay
Johns, Helen (Huron PC) for Mr Hudak
Marchese, Rosario (Fort York ND) for Mr Hampton

Also taking part / Autres participants et participantes:

Halyna Perun, legal counsel, Ministry of Health
Trudy Spinks, manager, implementation support and counsel, implementation support unit,
Ministry of the Attorney General

Clerk / Greffière: Donna Bryce

Staff / Personnel:

Joanne Gottheil, legislative counsel
Doug Beecroft, legislative counsel

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First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Monday 15 April 1996

Journal des débats (Hansard)

Lundi 15 avril 1996

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Electronic monitoring

Surveillance électronique

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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 15 April 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 15 avril 1996

The committee met at 1529 in room 228.

ELECTRONIC MONITORING

Consideration of the designated matter pursuant to standing order 125, relating to the impact of halfway house closures and the introduction of electronic monitoring.

The Chair (Mr Gerry Martiniuk): Ladies and gentlemen of the standing committee on the administration of justice, I call this meeting to order. We proceed to have a quorum.

Before you at your places should be two reports of the subcommittee of the justice committee. The first one is a confidential report merely for information, which has already been deemed to be accepted. The second one I'd like to discuss with you for a moment in case you have any ideas.

The second one, which is the shorter one, states that the subcommittee makes the recommendation: "That the two expert witnesses, Jim Cairns, British Columbia and Richard Nimer, Florida provide testimony on electronic monitoring through videoconferencing technology."

I should add that no committee of the Legislature has ever had a videoconference. I understand it's used on Parliament Hill and it has been used for a couple of years. The alternative to videoconferencing would be teleconferencing and the difference is cost.

At the present time, we do not have in the main Legislative Building videoconferencing facilities, and it means if we proceed with this, we will have to go over on one or two occasions to the Ministry of Natural Resources in the Whitney Block to use their facilities. The cost is approximately \$200 for the videoconferencing, plus long-distance charges. Teleconferencing is considerably cheaper. The reason we're doing it of course is that to bring one witness here would be somewhat over \$5,000 before we finish, so this is considerably cheaper.

As it has never been tried, I'm going to suggest an alternative that's not the committee's alternative, that we have one of the witnesses as videoconferencing and take one as teleconferencing. I think we then can compare the merits of both systems and possibly pass those comments on to the Legislative Assembly, which should consider if videoconferencing, for instance, is something we should continue with as a permanent facility in the Legislative Building.

We can either accept the subcommittee report as it stands or we could amend it to have one video and one tele so we could compare the two, and I'd ask anyone for their opinion.

Mr Gary L. Leadston (Kitchener-Wilmot): I agree with your analysis. Obviously this is a new experience, I'm sure for many if not all of the members, and I think it would be an option to explore both forms of new technology and then address which is the most appropriate for future meetings. That's most reasonable.

The Chair: Mr Ramsay, this is your motion, so I'd be interested in your suggestions.

Mr David Ramsay (Timiskaming): I concur with the past comments. I think we're breaking new ground here. It might be good to have a comparator by using the two different means of remote conferencing. Why don't we try one of each?

Mrs Marion Boyd (London Centre): I'm quite prepared to try one of each. My sense is I am more particularly interested in the Canadian experience and hope that would be our videoconference experience, but I'm certainly willing to go along with whatever you decide.

The Chair: That would be the cheaper alternative also, so that is what we're trying to do.

Mr John L. Parker (York East): I don't want to be the fly in the ointment here. I was just going to say I have already had experience with both and I don't need the experiment. I'm quite happy to come down with a recommendation on one side or the other. But if it's the wish of everyone else to experiment, then I'm not inclined to stand in the way of that.

The Chair: We have then what I'd consider a motion from Mr Leadston to try the two alternatives. All those in favour of using that? Thank you. Carried.

It seems that I must read the other report of the subcommittee, if you'll indulge me for a moment.

"Your subcommittee met on November 28, December 4, 1995, and April 10, 1996, with respect to the consideration of a designation under standing order 125 by David Ramsay, Liberal subcommittee member, as follows:

"That the standing committee on the administration of justice meet for 12 hours to deliberate the impact of halfway house closures and the proposal to replace this form of monitoring inmate reintegration into the community with the introduction of electronic monitoring with particular attention paid to the experiences of other jurisdictions that have taken similar actions.

"Your subcommittee agreed that the committee commence consideration of this designation on Monday, April 15, 1996, and agreed upon the following:

"1. That the staff from the Ministry of the Solicitor General and Correctional Services be invited to provide a briefing before the committee. The time allotted for presentation, questions and answers will be two and a half hours.

"2. That the following two expert witnesses be invited to provide testimony before the committee for one hour each, including presentation, questions and answers: Jim Cairns, analyst, electronic monitoring program, British Columbia; Richard Nimer, program administrator, probation/parole program, Florida.

"3. That the following 11 witnesses, as agreed by the subcommittee, be invited to appear before the committee for 30 minutes each: John Howard Society of Ontario; Council of Elizabeth Fry Societies of Ontario; Ontario Halfway House Association; Ontario Community Justice Association; Anthony Doob, criminologist, University of Toronto; Probation Officers' Association of Ontario; Crime Prevention Ontario; Priscilla de Villiers, CAVEAT; St Leonard's House; Operation Springboard; Canadian Civil Liberties Association.

"4. That two hours be set aside for report writing."

I've read that into the record. I'd like to thank Mr Ramsay for his indulgence in the delay in getting this hearing, but we did have a strike and he quite kindly delayed it until after the strike.

I'd also like to welcome Gary Carr, the member for Oakville South, who is here representing the Solicitor General. We also have Mr Gilchrist and Mr Ouellette. Are you two substitutes? Thank you.

MINISTRY OF THE SOLICITOR GENERAL AND CORRECTIONAL SERVICES

The Chair: If we then could proceed. Could you identify yourself for the purpose of Hansard.

Dr Elaine Todres: My name is Elaine Todres. I'm the Deputy Minister of the Solicitor General and Correctional Services and I've brought with me my colleagues. I'm sorry if my watch is on different time. I apologize for being late. This is Neil McKerrell, the assistant deputy minister, and we'll introduce the others in turn.

We've been requested to be here and we are indeed very pleased to be here. We were asked specifically to come before you and speak to you about CRCs, community resource centres, and the electronic monitoring program. The Ministry of the Solicitor General and Correctional Services is committed to working very closely with the Ministry of the Attorney General towards the achievement of a modern, smaller and more effective justice system for Ontario.

That includes focusing our resources on serious crime and maintaining public safety as the highest priority in all the decisions we make. It means applying creative alternatives to deal with less serious offenders and recognizing and ensuring that rehabilitative services are delivered fairly and equitably. It means strengthening partnerships with the community and improving links among ourselves as partners in the justice system. It means streamlining management and the administration of the justice system.

For correctional services, a modern, smaller and more effective justice system will mean significant changes to its institutional infrastructure, to its capital plant, which is in large measure outdated and highly inefficient. As many of you know, two thirds of the plant was built prior to 1950.

The correctional services division has been conducting a very thorough review of its institutional system with a view to rationalizing, streamlining and reducing the enormous cost of incarceration. At the heart of the efforts to refocus resources on serious offenders are important changes to the ways in which offenders are managed and the risks that they pose.

In order to focus resources on the most serious offenders, we have concluded that it would require a risk assessment instrument, which in many ways is pivotal in any actions that we take forward. The introduction of this new instrument is called the LSI-OR, the level of service inventory-(Ontario revision). It's the latest revision to what was an older instrument. That statistical work and the research that went through it I think is critical to the achievement of our vision in the justice system.

Risk is a constant factor in correctional services, as much with community supervision as with institutional custody. The challenge is not to imagine that there isn't risk but rather to manage the risk as effectively and as efficiently as possible. Statistics show we are successful in comparison with other jurisdictions. Those new assessment processes will allow the division to do a better and more consistent job at sorting out and providing for the treatment of those offenders who appear to pose more of a threat to public safety.

1540

The Ministry of the Solicitor General and Correctional Services, like other ministries, is going through a rigorous evaluation of spending priorities to ensure that the maximum dollar value is achieved while continuing to maintain its objectives of public safety and offender rehabilitation. Correctional supervision has been particularly affected in recent years by the growing complexity of offender needs. Couple this with the reduction in fiscal resources, and it is necessary to examine and evaluate services provided by the division and the method of providing these services.

Decisions regarding whether to reduce or eliminate spending must include the ministry's ability to sustain services and programs that are required under law and regulations governing the provincial correctional services, while at the same time maintaining public safety to the full extent. What is affordable under the present economic environment are those services required by law and those programs that have demonstrated the greatest degree of effectiveness among the number of offenders.

The correctional services division has enjoyed a healthy working relationship with the agencies that have contracted with it to provide the CRC programs. I can tell you it was not an easy decision to terminate those contracts. The decision to terminate the funding to the CRCs and to implement the electronic monitoring program was shaped primarily by the need to refocus scarce resources on those offenders who pose a greater risk to public safety and the opportunity to allow those offenders deemed suitable to be in their own home environment to take advantage of local programming while still under correctional supervision.

Mr McKerrell, my assistant deputy minister, is going to present information on the CRCs, our decision to

terminate those contracts and the implementation of the electronic monitoring program.

Mr Neil McKerrell: Good afternoon. I'd like to begin my comments first of all by introducing two of my colleagues. Frances McKeague is the manager of adult community services and Michael O'Neal is the manager of the technology coordination unit and was primarily responsible for developing the plans to implement the electronic monitoring program. Both of them will be making presentations, and Mike will be providing some opportunity for you to look at the electronic monitoring devices. He'll explain how they all work and also how the program works.

As the deputy mentioned, I'd like to explain a little bit about Ontario's correctional system and the decision to close the CRCs. I'd like to start off by indicating to you that Ontario's correctional system is the second-largest in Canada after the federal system, Correctional Service Canada. In the 1994-95 fiscal year we had over 72,000 people under supervision on any given day in Ontario. Of that 72,000, 85% of them were adult offenders and 15% were young offenders. Of the adult population, 87% of them were supervised in the community and only 13% of adult offenders were supervised in institutions.

The correction services budget as it stands today is approximately \$500 million and it has been shrinking progressively over the last few years from a high of about \$580 million. We know there are further budget reductions to come as part of the government's restructuring process. As the deputy indicated, we have been and are continuing to try to examine everything we do to find ways and means of making the system more cost-effective while still meeting the public safety and core legal mandates.

We've already reduced the administration in correctional services in the pure administrative area by 30%, in the community services management by 20% and in institutional management by almost 10%. We're involved—I think the deputy alluded to it—in the notion of downsizing and streamlining the justice system with our colleagues in the Ministry of the Attorney General and working towards an integration of the justice system which will make it more effective, more efficient and much more manageable.

Basically, the objective we have is to try to use the money that's left in the most cost-effective manner possible while still meeting our mandate. The decision to close the community resource centres was not a random or haphazard act. It was in the context of the restructuring of correctional services, but it was one piece of that restructuring which could proceed independently from the rest of the overall planning processes for the community and the institutions.

To give you just a little bit of history about the community resource centres, in Ontario our use of them dates back to the mid-1970s when they were started primarily as a means to supervise low-risk offenders more cheaply in the community than they could be in institutions. It started about 1974. We had our first couple of houses and then they increased progressively from there.

The residences were established in a number of communities across the province on the basis of block-

funded private sector contracts to provide room, board and supervision to approved men and women. Some of the operators were independent and some were associated with larger organizations such as the Salvation Army, Elizabeth Fry and the John Howard Society.

Most of the residents in these houses were from the institution that was proximate to the house. They were largely on temporary absence from these institutions. There were a very few residents who were either on parole or probation but the majority of them were on temporary absence from the institution. The residents had the opportunity to attend their own employment, if they had work when they came into prison. They had the opportunity to search for a job. They could resume their education. They could attend treatment or counselling or training programs. They could also participate in organized leisure activities, group discussions and other supportive and befriending activities through the residence.

By 1994-95, Ontario contracted for 398 beds in 25 CRCs at a cost of \$11.6 million to look after approximately 1% of its offender population. Now, 1% of the budget would have been roughly \$5 million. With a utilization rate of 80.6% in that year, the average per diem was \$80.

Community-based correctional residences are commonly used in most jurisdictions, and we offer no disagreement that they have a role to play in the criminal justice system. The point for Ontario, or at least for correctional services in Ontario, was, what type of role would they play and for which offenders?

In this country, the federal government uses halfway houses to reintegrate people who have been incarcerated for lengthy periods of time, usually measured in years. Many have committed serious offences and face significant problems readjusting to living in the community post-release. The majority of the significant public incidents which have arisen from residents of halfway houses are primarily related to federal facilities rather than provincial facilities.

Other provinces in Canada use community resource centres in the same way that Ontario did, which is basically as a cheaper means of accommodating low-risk offenders. However, recently Alberta announced its intention to reduce its nine houses by an undisclosed number because of anticipated reduced need based on potential changing sentencing practices and the availability of other community alternatives.

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Given that the average provincial sentence for men in Ontario is 92 days and the average provincial sentence for women in Ontario is 72 days, we're talking about a very, very different type of offender population than the federal system deals with. With such short sentences, Ontario's offender population does not have the same kind of reintegration problems that federal inmates have and the benefit of reintegration housing is perhaps more readily apparent.

The profile of residents in Ontario's CRCs, when we were operating them, was as follows, and I'll just give you some idea of what kind of people were in the houses. In terms of the types of offences, the most common offence was for impaired driving, and we had 28.5% of

the people in CRCs for impaired driving. Theft and possession was the next-largest group, at 25.2%, followed by break and enter and property offences, at 16.4%; lesser types of assaults, 16.4%; and drug-related, about 12.2%.

In terms of the length of sentences that our residents of the CRCs had—and this is their total sentence they were serving—26.9% had less than three months; 30.1% were serving between three and six months; 20.5% between six and 12 months; and 21.2% were serving greater than 12 months, that is, greater than 12 months but less than two years less a day.

The time in custody before placement is interesting: Fully 75% of the people that we had in our CRCs were in custody for 60 days prior to placement. The time remaining after placement is also interesting: 50% of the people that we had in our CRCs had less than 81 days to serve.

The most common program participation for our residents was alcohol counselling, largely conducted through AA, and 59.7% of the people were participating in that. Life skills counselling was next, with 52.9%. People participating in work programs were 38.1%. In other words, the people Ontario placed into its CRCs on TAP were those considered not to be a risk and who could be more cheaply supervised in the community rather than in institutions. In short, these were people who could function quite safely in the community and the majority had homes to return to upon the expiry of sentence.

A number of the criticisms which have been directed at the closure decision relate to the loss of the support of living environment and programming to assist the offenders to improve their chances of not recidivating. When we were examining the CRC issue, we looked at the type of programming which was available to the residents through the CRCs and we identified the following kinds of programs: the alcohol counselling that I've mentioned before; health and lifestyles; discharge planning; self-help programs operated through Seven Steps, among others; drug counselling programs; educational upgrading; recreation programs; money management; anger management; job search or the maintenance of existing jobs; and driving-while-impaired programs.

However, it was determined that CRC residents were being referred to program activities outside the house in the community at least as much, if not more so, than to in-house programs of a unique or specialized nature. These community-based programs were of course available to all offenders whether they were on the extended temporary absence program living at home, whether they were on parole or probation, or whether they were living in the CRCs.

We determined, however, that specialized or unique residential programming was a valuable resource to assist offenders with very specific needs which could be best met by placement in the community, and it was for these specialized needs that we decided that the group of community residential agreements which we had should be retained. We've had them for a number of years and we felt they should be retained because they're funded largely on an ad hoc basis whereby we pay for the beds as we use them, as opposed to block funding beds that may not be used.

We're currently conducting a review of these community residential agreements to ensure that we have the right services in the right places and that they're being delivered in the most cost-beneficial, cost-effective way. This review could result in some changes being made to existing contracts, but the community residential agreement program is going to be retained to meet the specialized needs.

On the issue of the loss of a supportive living environment through the closure of the CRCs, we considered that our offenders were living in the CRCs with a peer group of other offenders, just as they did while they were in prison, with a minimal offsetting benefit when you looked at the other aspects of it, whereas by living in their own homes there was a reasonable chance of having reduced prolonged contact with the criminal peer group. As probably all of you are well aware, the criminal association is one of the major criminogenic factors which leads to or contributes to recidivism.

Another factor which we considered was the limited availability of CRC opportunities across the province. They weren't universally available, with 25 houses located in only 18 communities. At an earlier time, a number of years ago, we had more houses in total, but a number of them were closed over the last few years, because of either poor contract performance or low utilization.

On the utilization factor, over the last nine years across the system and by region, by year, the utilization fluctuated from a low of 56.2% to a high of 90.1%. With the period April to September 1995, just prior to the closure announcement, across the province the utilization was averaging 72.1%. These were block-funded residences, where we paid whether the beds were full or empty.

When all of these factors are added to the anticipated changes in sentencing patterns following the proclamation of Bill C-41, which should see more people ordered directly to community supervision rather than custody, we believe that our decision to close the block-funded residences and keep a range of ad-hoc-funded specialized services for those offenders who really need them was both prudent and cost-effective in the circumstances.

What I'd like to do now is ask my colleague Frances McKeague to talk a little bit about the level of supervision inventory, our risk assessment instrument. She'll also talk a bit about our vision for community corrections.

Ms Frances McKeague: Thank you for the invitation to appear before you today. We certainly welcome this opportunity and specifically I welcome this opportunity because one of the criticisms we had heard on our closure of the community resource centres was that we had killed community corrections in Ontario. I'm pleased to be here today to give you some background and to indicate to you that we have not killed community corrections in Ontario. There are a number of us who are still around who believe in community corrections, to the point where we're developing, reviewing and revising our revision to provide cost-effective services to offenders in the community.

Having said that, the areas I want to cover for you this afternoon include a history of our risk assessment in Ontario. I think it's important that we give a context to

some of the work we've been doing, particularly with offender risk assessment and particularly in Ontario, because in the Ontario correctional system we've really been on the cutting edge of designing and developing risk assessment tools and risk assessment instruments that have been used quite extensively in other jurisdictions as well.

I'd like to give you a bit of an idea on the purpose of risk assessment, what we're trying to do, what are some of its limitations and why are we pursuing this direction in Ontario. I want to give you a model for risk/needs assessment, to give you a little bit of a context upon which we are doing. I want to run you through a little bit of the instrument as well, because some of the work that we've been doing is a little difficult unless we've had some firsthand experience in the kinds of things that we're looking at in risk/needs assessment. So I'll go over that as well.

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More importantly, what we'd like to do is relate the applicability of the risk assessment instrument to a process of risk management, because that's really what we're talking about: How do we manage that risk effectively and how do we do that effectively in the community? Really, that demonstrates the utility of that instrument, because we want it to be and we can see that it is really the foundation or the cornerstone for a renewed community corrections strategy in Ontario.

I want to give you a bit of an overview too on some of the things that we're considering on what we have called our community justice continuum, some of the areas that we have felt from our perspective are important based on a good solid risk/needs assessment.

So a little bit about the history. I think the history of risk assessment in Ontario is very impressive and it's one we are quite proud of as well. The process started in Ontario and it has since led to the development of a similar system in Correctional Service Canada. It's also being used in several American jurisdictions; Colorado, for example. Other folks internationally have also expressed an interest, such as New Zealand, Australia and our colleagues in England and Britain as well.

The work that is being done in those countries really was started in Ontario, and pretty much it was back during the late 1970s. Our correctional system worked quite extensively with Dr Andrews, a psychologist out of Carleton University, to design and implement a risk assessment instrument specifically for probation and parole. The instrument was introduced in the late 1970s and it did provide the foundation or the background for all community supervision for probation and parole clients for well over a decade.

As a result of the review, however, of our offender classification system, the need was established to get a much better process of risk/needs assessment that would be applicable for all offender groups and would be applicable for all facilities, both institutions and in the community. So in 1994 we brought Dr Andrews back again. He assisted us with reviewing and revising our level of supervision inventory, and it's now been renamed the level of service inventory, to reflect the intent of what we are trying to do. We feel that we have a much more

comprehensive and sophisticated instrument than what we had before, and we also have an instrument that is used for both adults and young offenders in all correctional settings. We undertook a very comprehensive training session in the fall of 1995, and on January 2 we introduced the instrument for all correctional settings.

In going over what we're looking at, the purpose of risk assessment really is twofold: First, it is to predict whether an offender is going to reoffend at some future time, and second, to use that knowledge in making some very key decisions on intervention or service delivery for offenders, particularly around supervision strategies in the community but also security decisions as far as institutions go as well.

It's really vital in using any risk assessment instrument—and this is what we're doing in our system—that it not only be used as a predictor for future reoffending, but it's also used as a focus for correctional work, and that is effective intervention with offenders. If we bear this in mind—and I want to get into this a little bit more in depth—it's not only to predict behaviour, it's to influence behaviour as well, which is really the thrust of what corrections is all about.

This is our model for risk/needs assessments that we have used as a conceptual framework for understanding criminal behaviour with our offenders in the provincial system in terms of risk assessment, and it was used in all of the training sessions with both the institutions and the community practitioners that we did this past fall.

Just to very briefly go through it, what we're doing in our model for risk assessment is first of all looking at the overall risk. What is the risk of that offender or the probability or the likelihood that they're going to do further criminal or anti-social behaviour? How we determine that is, as soon as an offender's foot hits the door of an institution or of the probation and parole office, or shortly thereafter, we do an in-depth offender assessment on them. We look at eight key areas—and I'll get into these a little bit later when we look at the instruments specifically: past criminal history; education-employment, the status of that; family-marital situation; what they're doing with leisure-recreation; substance abuse issues; associates—who they're hanging around with; their attitudes on criminal behaviour; and what is called an anti-social pattern. I'll expand on that a bit more.

So we look at overall risk. The assessment itself produces a score, and the more of those risk factors I just outlined to you that are present in an offender's situation, the higher the likelihood that they will reoffend.

Referring back to what I said earlier, about so what if we have a score that indicates risk for reoffending: The assessment also identifies what we've called here the risk factors, but it looks at things called need factors as well, both static and dynamic. Static risk factors are the kinds of risk factors that we cannot change and are fixed. Things like criminal history, history of substance abuse and that sort of thing are static risk factors. Dynamic risk factors, of that list I just outlined, are those issues that can change over time, like a family-marital situation that is dysfunctional. There is some potential for change. Current substance abuse—could be some change there. It's those dynamic need factors or risk factors that we are

particularly interested in in corrections, in what we have called criminogenic needs. That really is what makes the LSI-OR, the level of service inventory, unique: its emphasis on those dynamic risk factors. Those are the ones that we are targeting for change and the ones we are most particularly interested in when we're doing our assessments.

The assessment also—and I'll look at that a little bit later when I look at the instrument—looks at some other areas that are not related to future reoffending. Those are things like mismanagement of finances, the fact that they don't have accommodation, just to name a couple of things that don't necessarily relate to future reoffending, except there may be some situations in their lives that are very important that we may have to address in what we call our case management of the offender. But our most important ones, the ones that we want to target and look at, effecting some sort of change with that offender, are what are called the needs factors. If we can make some sort of inroads into those areas, those are the ones that we see can make some change, which is really the cornerstone of our risk assessment process.

The instrument itself: I have handouts of all these, so you don't have to take copious notes. That will give you an outline of what the instrument looks like. If you look at the area on general risk/needs factors, those are the eight factors that I indicated before, the presence of which increases with the increase in their risk. In doing this kind of assessment, we are basing it on a number of interviews or sources of information that we have used in addition to interviews with the offender himself or herself. These include official police records, interviews with family, employers, schools, official mental health records, those sorts of things where we get our information from.

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Of the eight, there are really four areas in the assessment that are certainly more important from the psychological point of view and the ones that we really intend to concentrate more of our efforts on. One of these is what we call the attitudes, values and beliefs, and that one is, in our interviews, in looking at what offenders are bringing with them, we want to know what it is that they rationalize about being involved in crime. For example, if we are hearing a lot of statements like, "It's okay; nobody got hurt," "It's big business," and on and on, that's indicative of an attitude that's very supportive of crime. Phrases like—if I can think of one that I heard a couple of weeks ago from a fellow charged with abusing his spouse: "When two people love each other, they beat up each other anyway." Well, I don't think so, but that was one of the rationalizations that we heard. So in our interviews with offenders, if we're hearing a lot of that kind of thing, that is indicative of an attitude that's supportive of crime, which is a risk factor.

The other two: If their associates are involved in crime and anti-social behaviour, that's also indicative of a high-risk factor as well. Those personality factors—if there is a diagnosis of psychopathy, for example, that's going to clue us in that there are certain areas we may want to explore a little bit more. We're not making that diagnosis, but we're going to be looking for that. If there is an early and repeated pattern of lawbreaking, of rule violations

and that sort of thing, that's indicative of a risk factor as well. The last one, a history of anti-social behaviour or criminal behaviour, is also indicative of high risk.

As well, we look at on the instrument—you take a look at the section here, "Specific Problems with Criminogenic Potential," those are the ones that again are directly related to law violations or criminal behaviour. We look at prison experience, at what is it that they have brought with them in terms of their past incarceration, at whether they've been a perpetrator before, either sexual or physical assaults, escapes, fire-setting and so on.

It's a pretty in-depth assessment that we do with these offenders, and after we have collected our information we summarize it numerically and we get an idea of their total score. We have separated that into low-, medium-, and high-risk areas. That kind of a separation then determines what it is that we are choosing to do as far as the supervision level or the security in the institution as well. That really determines our program replacement decisions.

As I was mentioning before, there are other areas that we also look at, called other client issues. Those other issues are also, as I say, important when we're developing a plan. We will want to spend a considerable amount of time doing it, but what we want to concentrate our efforts on are those factors that are directly related to lawbreaking.

How does that all fit with community justice and our vision for community corrections? There is a distinct relationship with risk/needs assessment as being appropriate and what it is we want to do with community corrections in Ontario. The proposal we're considering is really very much related to the data and the work we're going to be doing with our instrument.

I should indicate to you too that we just released it on 2 January. We've had a bit of a glitch for five weeks where we haven't collected our data, but we're back on track again and we're going to do some much more solid data collection, downloading that information we have on our computers and getting a better, solid information base.

But with our community justice continuum and consistent with the remarks that have already been made about the direction we want to go in corrections generally in Ontario, what we're looking at is developing, among other things, an offence-based alternative measures program to divert low-risk offenders from the criminal justice system. That's one area we're looking at consistent with the new legislation under Bill C-41.

As I indicated, we're looking at a community corrections system that is based on risk assessment and, more importantly, risk management. We're looking at a three-tiered community corrections approach that outlines a community corrections intervention which is commensurate with the risk/needs level of those offenders we have assessed. We're looking at a continuum of community corrections that follows offenders from institutions into the community and targets our resources for those offenders at high risk and most at need.

We're looking at enhanced technological infrastructure.

A key one we're really looking at is an integrated community justice continuum, and what we mean by this is that all the partners in the community will have a say,

I guess, in what we're doing with offenders in those communities, involving all of our stakeholders, not just corrections but police, courts, crowns, the community residences and the community, both residential and business, social service agencies, community justice organizations etc.

We're looking at an increased and enhanced private sector involvement, encouraging these stakeholders to take a greater role. It's not that we haven't always done that—we certainly have—but we want to go back and refocus ourselves and review how we can do that better with those folks. We have a good, solid base in community corrections, we believe, in order to do that.

The approach we're also looking at as well, consistent with this continuum, is how we are going to look at dealing with offenders. As I mentioned before, an effective correctional intervention is one that targets resources and services to those offenders who are most at risk and most at need. Accused persons charged with minor offences: We want to take a good look at what I said before, the alternative measures for adults and can that be applied. We're just on the consideration stage with that one as well, but we think there's some potential there.

As far as the assessment process for community corrections goes, we're looking at a much more refocused, restructured strategy for dealing with our offenders in the community, looking at it from a three-tiered approach, from low-risk, long-need offenders—probationers—where we will not be offering a great deal of service, to the medium-to-high-risk to high-risk offenders. The things we're considering around medium-to-high-risk offenders and in addition to the very high-risk, because there are some offenders who just come to our service who don't want our service and they're sometimes the hardest to manage, is we're looking at or investigating much more of an intensive supervision for those folks. There is a potential, we feel, to expand our use of things like electronic monitoring for those kinds of offenders. But we have to be careful in our assessments of those offenders as being crucial to what sorts of programs we're going to be looking at.

Throughout this whole thing, throughout our community corrections strategy is an emphasis on the whole case management approach we feel is important when we're restructuring community corrections, and the things we're looking at are using a good assessment process, a good way to manage those offenders and manage that risk, but also to use all of the players in the community justice system and the community itself to the best advantage.

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Also, going back to what I originally said, the community corrections strategy is on the cutting edge. We're on the drawing board, we're in the thinking stage with it now, but preliminary indications from our work with the level of service inventory, the risk/needs assessment, is very encouraging. We've got quite an extensive training program that was put in place. We think it's going to work out quite well.

I would like to turn it over to Mike O'Neal, who's going to give you an overview of the electronic monitoring.

Mr Mike O'Neal: I'd like to begin by thanking the committee for the opportunity to come and speak today

and provide some basic information on the technology we're using in Ontario, provide a bit of historical information concerning how the technology is being used in other jurisdictions, to give you a sense of that, and to also outline how the program is structured in the province and provide a bit of an update on our experiences with the program today.

Electronic monitoring is a program we consider to be a safe and effective alternative for non-violent offenders. First, let me begin by reviewing what electronic monitoring is. It's a freedom-restricting tool for monitoring carefully selected inmates in the community. It helps to monitor an offender's compliance with curfew and program schedules.

There are three types or generations of this technology. The first generation, passive and active curfew monitoring, does not involve any tracking. That's the kind of electronic monitoring technology we're using. A second generation of the technology, currently under development, provides tracking. By that, I mean being able to plot an offender's whereabouts at any point in time. The third generation of the technology, something I would guess we would not be interested in at any point in time, provides tracking plus escape prevention, an automatic shock feature. Believe it or not, there are experiments into that version of the technology.

Mr Parker: We don't want to talk about that.

Mr O'Neal: I didn't think so.

How electronic monitoring is being used in some correctional agencies: It's being used as a condition of remand and pre-trial release; as what's called a front-end sentencing alternative to prison; for immediate sanctions for probation and parole violators; as a condition of early release from prison; and to enhance rehabilitation of drug addicts upon release from drug centres.

What I've described here is the range of applications of electronic monitoring, not our particular application of electronic monitoring thus far. We are applying it as a form of early release.

To give you a flavour for the growth in popularity of this alternative, the chart clearly shows a pattern beginning in 1987 and concluding in 1994. I don't have information for 1995, but I know from research that the popularity of the program continues. You can see a definite growth in the use of the technology, up to 67,000 units of the first generation of the technology in use in North America in 1994.

How we're using the technology: We're presently using it strictly as an early release option for short-sentenced, non-violent offenders. Our program commenced on January 2, 1996. At that point, we had all equipment installed, our staff fully trained, the program model fully developed and our procedures in place. We also commenced the level of service inventory-(Ontario revision), something that was described in detail by my colleague. All testing was completed by January 16. Our first clients were released on January 26. From January 26 until February 26, 1996, 10 to 14 clients were added to the program weekly, on average, to the total of 40 by the time we arrived at the OPSEU strike.

Let me review with you the eligibility criteria for the program. The core requirement is a level of service

inventory-(Ontario revision) score in the low to medium range.

Participation is voluntary and if at any point the client is participating in the program and they indicate they're no longer interested in the program, they can be removed from it.

The offender's sentence must be less than 180 days or, for those serving longer sentences, there must be less than 180 days remaining in the sentence.

The residence must be within a reasonable distance from the releasing institution.

Since the electronic monitoring is a form of temporary absence pass, the suitability of an offender for the program is consistent with the provisions of the temporary absence pass policy and procedures.

There must be a suitable residence. Where it is shared with others, they must be supportive of the offender's conditional release and the conditions of the electronic monitoring program.

The residence must have a telephone line and telephone.

Offenders with the following characteristics are not eligible for the program:

A pattern of violent behaviour or arson, defined as a current conviction for what we call a violent level one offence or arson or a conviction for one of these offences within the last five years.

A sentence for sexual offence, as defined in our management and supervision of sex offenders in the community policy.

A current conviction for drug trafficking.

The offender must have a constructive community plan consisting of at least one of the following activities: employment; education; child care or similar responsibilities; medical needs requiring regular intervention and best delivered in the community; participation in a treatment program in the community. We also allow for other approved activities in exceptional cases.

Let me tell you a bit about the electronic monitoring program model. We have a host computer in North Bay. It's situated in a location where we have expert technical staff on duty 24 hours a day, seven days a week. They've been trained extensively in how to support the technology and are there in the event of a problem. Situating it in North Bay also gave us the benefit of some of the other technology that's in place to maintain our offender management system, such as having a diesel generator backup in the event of a power outage.

We have 17 participating institutions and others have already expressed an interest in getting involved.

We have five data entry sites. The model we had in place to try to contain costs: We initially put five computers at designated institutions so that data entry could occur at just those five sites while we were able to get 17 sites up and running. Each of the five data entry sites has a catchment area of institutions that fax the information to it in advance of their clients being released on the program.

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The program is staffed by specially trained electronic monitoring officers and data entry clerks performing their respective duties. We are also using existing staff in insti-

tutions doing what they are trained to do. For example, we're using our experts in classification and we're also using our experts in the temporary absence program.

You're going to have difficulty making sense of this. Perhaps what I'll do is simply leave this slide and if you'd review it individually when the package gets distributed, that would be better. It simply displays two scenarios: first, the scenario where an offender is complying with the devices and the signal is not resulting in an alarm going to the host computer. In the other instance, where there is an alarm registering, it shows the flow of those signals. I'll say no more at this point.

I'll tell you a bit more about the electronic monitoring program technology. The host computer in North Bay is near fault-tolerant, meaning that we have all the necessary hardware and software in place to guard against all but the most cataclysmic of events. We have—

Mrs Boyd: Like a strike.

Mr O'Neal: Like a strike, that's true. It is sort of cataclysmic. Like a direct lightning hit to North Bay.

Our data entry site computers are fully equipped with the latest technology and their own printers. We have as well pagers for each electronic monitoring officer and each operational manager. I'll mention that, again to try to contain costs, we are utilizing operational managers, who are working a 24-7 schedule—24 hours a day, seven days a week—for full coverage in our institutions to cover the times when our electronic monitoring officers are off duty. They assume responsibility for being available in the event of any alarms or alerts. A pager is provided.

We also acquired cell phones for each of the officers and we acquired a dedicated fax machine for each of the 17 sites so that we'd have a backup. If there is some problem with getting a page to the pager, then there is a fax transmitted simultaneously to the dedicated fax, so we have that backup.

We've since also acquired notebook computers which we intend to use for the electronic monitoring officers to be able to remotely access the electronic monitoring technology or software and also our offender management system. We get the added benefit of OMS access remotely, something we haven't generally had up until this point in time.

We also acquired electronic monitoring program vehicles. Again to try to keep costs to a minimum, we worked with the Ontario Provincial Police so we could acquire vehicles that had served the OPP well and with some minor refurbishing could be made available to us. Since we're not imposing the same demands on the vehicles as the OPP, they'll serve us quite well, we think, for the future.

Mr McKerrell: Read into that "old cruisers."

Mr O'Neal: We also managed to integrate the electronic monitoring technology with our existing technology telecommunications infrastructure. It was quite a feat, given the time lines we were working with, and we had tremendous support from our information resources division experts. The reason I'm emphasizing this is that it's another way for us to keep costs to a minimum. Some other programs don't have this feature and the electronic monitoring technology ends up incurring long-distance

charges. We end up taking advantage of the great rates that are negotiated for the flow of data across the province over the telecommunications network.

Our host computer receives calls from the field monitoring devices. It compares the information received from the field monitoring device with a schedule that would have been pre-programmed on to the computer on the given client. The host computer knows when the client is to be within the residence and when the client is to be out of the residence and those signals are then compared against that information that's resident on the machine. It also generates alarms for follow-up by corrections personnel under a variety of nine different circumstances.

I didn't bring the host computer with me, for obvious reasons, but I did manage to bring some samples of the other technology. What I'll do is simply distribute them as I go.

I'd just ask you to pass that around. That's the field monitoring device. It's installed in the subject's residence. It's connected to the phone and to the power in the residence. As you look at it, you'll see at the back of the unit there's a place for a plug to go in, very similar to the way you would hook up an answering machine, plugging in, and it matters not which plug you put in either of the two jacks. It communicates with the host computer over a standard phone line. It monitors the presence and absence of the transmitter, and I'll show you the transmitter in just a moment.

Here it is. Pass that around. That's the ankle transmitter that gets affixed to the client's ankle. The way we are implementing the program, that ankle bracelet is affixed to the offender before he or she leaves the institution so that we can ensure there is the appropriate correctional staff on duty and not get ourselves into a vulnerable situation putting that device on in the offender's home.

The transmitter is worn 24 hours a day. It's kept on the person for the duration of their involvement in the program. It transmits an encoded signal three times a minute, so that gives you some sense of how frequently the unit is polling for the presence or absence of a client. It has multilevel tamper detection; it's water and shock resistant. We encourage participants to bathe regularly and we want them to know they won't be electrocuted, nor will they damage the unit unless they engage in scuba diving. If they go beyond 15 feet down, the unit isn't guaranteed below that depth.

It's powered by a replaceable battery—it says "batter" there; it's really not "batter," it's "battery"—with a one-year useful life, and it's not noted here but a shelf life of three years. The industry is working on batteries that will last even longer. I should mention that given the duration of an offender's involvement in the program, it doesn't affect a given offender.

I'll talk to you a little bit about the limitations of the technology. It cannot prevent an offender from going unlawfully at large. It's not as if the offender is on a physical tether. If the offender wants to flee, the offender flees. The unit—and you'll get a sense of it when you have your chance to see the ankle transmitter—can be removed by the offender with a pair of shears. It can be removed, but it can't be removed without an alarm being

sounded and it can't be removed without generating physical evidence confirming the fact that it was removed.

The other limitation is that our version of the technology, being the first generation, cannot track the offender's movement beyond the residence. We are not using global positioning technology to try and pinpoint the offender when not at home.

Before I go on, I'd like to mention another piece of technology, a thing called a drive-by unit or mobile unit. It acts just like the other unit, the field monitoring device. It's affixed to the home in a sense. It allows the electronic monitoring officer to drive by the person's place of work or other place where they're engaged in a constructive activity, such as school etc, to determine that the client is where they're supposed to be when away from home during a scheduled absence.

The electronic monitoring officer could go to a place of employment—let's say, for example, there are three to five offenders who are at the same place of employment. This technology is sophisticated enough to discern one signal from the other and verify that all those clients were there. Interestingly enough, if there were two people at the same point who weren't supposed to be associating, the technology would also show that. The information that is observed is recorded and then downloaded on to the computer later. I'll pass that around as well.

1640

We do have an evaluation strategy concerning our program. I won't go into it in great detail, but it is an objective evaluation that will be conducted by our ministry's research services unit. The evaluation period has changed. We had originally intended to start the evaluation process for a 12-month period commencing in January, and now we're starting it after the OPSEU strike, unfortunately, ending in April 1997.

The Chair: Excuse me, Mr O'Neal. I think Mrs Boyd had a short question.

Mrs Boyd: I have just a very short question. I'm sorry to interrupt you. But you said if they were associating with somebody they shouldn't be associating with, even if that person didn't have one of these on, you would know?

Mr O'Neal: No, I'm sorry. If both individuals had these.

Mrs Boyd: Okay, thank you.

Mr O'Neal: Program monitoring reports will be submitted quarterly. We received a first draft interim report at the end of the OPSEU strike.

Let me give you an overview of our experiences with the program to date. We had a total of 40 offenders participating prior to the program's suspension due to the OPSEU labour dispute. I'd like to add that it was due to the OPSEU labour dispute but also to the fact that because the electronic monitoring program wasn't around at the time, it wasn't one of the programs negotiated as an essential service and hence was not covered by that agreement. Offenders have been released from 14 of the 17 authorized institutions. Offenders' sentences have ranged in length from 20 days to 138 days.

Participation in the EM program: You can see from the five weeks we were up and running prior to the strike, the first week was a little slow—we had a couple out—

and then we jumped up to between 10 and 14. In fact in the fourth week we were a little bit above 14 going out. The fifth week tapered right off because of the pending labour problem and the fact that about two days into the week people were advised not to release anyone else on electronic monitoring.

This is the distribution of offenders on the electronic monitoring program, again prior to the strike. Pretty even distribution is reflected on the chart. We will expect higher numbers concerning southern Ontario. It's not what we would expect proportionally, given the number of offenders who are in southern Ontario institutions.

Distribution of offenders based on the sentence length: You can see there that we had less than five with sentences in excess of 120 days. I won't go into this in detail. I'd ask you to refer to the chart in hard copy. The majority of the clients out on the program, in excess of 20, had sentences ranging from 31 to 60 days.

The reclassification of electronic monitoring clients consequent to the OPSEU labour dispute: We were quite creative in handling the offenders who were out on electronic monitoring. We certainly did not want to adversely impact anyone with a constructive activity such as employment etc. Some individuals were close enough to the end of their sentence that they were given a pre-release or terminal temporary absence pass to the end of their warrant expiry. Others were given a day pass, a recurring TAP; others again were given other forms of TAP, including an extended temporary absence pass, which is a form of recurring 15-day pass. A total of 40, though, were out, as I said, at the point of suspension.

Since April 10, 1996, 16 clients have been released. Following the strike, we completely reviewed the system and got the system back up and running by April 4. By April 10 we had restarted the program and we have, as of this morning, 16 clients on the program. From what we're hearing, we expect to see the numbers increasing substantially, particularly since everyone was very comfortable with the program prior to the strike, just getting into it, and then had that unfortunate impact to deal with.

We have a staffing plan for our next phase, to be implemented shortly. We introduced the program using a method that fairly quickly identified staff in each of the releasing institutions, and those staff were put on a six-month or slightly short of six-month temporary assignment. We have a plan to have a full competition or probably a two-year temporary assignment, and we are endeavouring to have a program that will make it fair for everyone, whether they've had any experience as an electronic monitoring officer or not. We plan to be training the individuals and testing everyone involved to identify the best candidates for the next phase.

We also have an alcohol testing component which requires training, policy to be developed, and ultimately an implementation that we're shooting for by the end of the summer. That device we did not implement initially. It was strongly recommended by everyone we talked to, particularly the vendor in other jurisdictions, that we not get into that degree of complexity at the start of the program. It was thought better that we deal with the basic technology components and then look at that other device later, and that's what we're doing.

If we have time and if the committee is interested, I have a brief tape that shows the alcohol device, shows the ankle device being installed. It's approximately 10 minutes. But in a nutshell, that alcohol device is a component of the home electronic monitoring technology. It's fully integrated with the field monitoring device, and for the clients who are selected to be involved in the program, and it will be a subset of all of those on the program, at regular intervals they will be alerted to the need to provide a breath sample. It's a deep, long breath sample that's provided and there is a multiple level of detections to confirm that it is in fact the client on the program who is providing the breath sample, through voice verification and some other technology. That's what it is.

We haven't developed the procedures yet because of our initial focus on the program. But that's one of our major next steps, developing the procedures and providing the training, and we intend to integrate this with the staffing approach used for the next phase of the program.

Let me talk a little bit about other possible electronic monitoring applications in Ontario. I'll mention first that we've made no commitments to looking at other applications. There have been some very preliminary discussions with the Ministry of the Attorney General; however, no commitments and no definite plans to apply electronic monitoring in any other way.

But intermittent sentenced inmates is certainly an area where we could look at using electronic monitoring. Intensive supervision, probation and parole, as my colleague Frances McKeague alluded to earlier, or intermediate sanctions, depending upon one's terminology, is an area where electronic monitoring could be used effectively and has been used in other jurisdictions.

Probation following incarceration is an area we're exploring, looking at the number of offenders we have with probation to follow incarceration, whether they fall within the existing parameters of the program or not. Certainly where you have an individual who has probation to follow, it may make sense to get the individual out on a form of temporary absence pass prior to them getting on to probation.

Another area is bail supervision, and lastly, domestic violence. The vendor that we went with in the technology that we're using also has a different form of technology called the jurismonitor. It is a device that's been used on a limited basis in other jurisdiction to help alert a victim of violence to the presence of the perpetrator of the earlier offence. In a sense, the offender wears an ankle transmitter and there are devices in the victim's home to help alert the victim. The technology is not sufficiently reliable yet but it's close, and as soon as I think it's close enough, it will be something for us to explore in concert with the police and with the Ministry of the Attorney General.

That's it for that presentation. If you'll bear with me for just a moment, I'll start the tape and show you the rest of the equipment.

1650

The Chair: Excuse me, Mr O'Neal. I'm sure there are a number of questions. We had allocated an hour and a half and we've only got five minutes left of that hour and a half. We have until 6 and we had allocated approxi-

mately an hour for questions. Possibly we could use the tape at the end if we have time, to make sure it doesn't cut into our question time. Each caucus therefore has a maximum of 20 minutes, and we could start with Mr Ramsay.

Mr O'Neal: If I may, one thing I've been reminded to add is the fact that our program is designed so that if an offender is released on electronic monitoring, there is no requirement that the offender remain on electronic monitoring until the end of their sentence. We've allowed for a cascade option. If an offender is performing well in the program and it's determined that there's no longer a need for the higher level of monitoring provided by the technology, we can cascade that person to a straight extended temporary absence pass where appropriate.

Mr Ramsay: I'd like to thank everybody for coming. I have a few questions and I would just address them to the group. I suppose, Elaine, you could direct them to who you feel would be the most appropriate responder.

When the announcement came last fall that you were not going to renew the contracts for the CRCs and that one of the replacements was the increased use of electronic monitoring, one of the concerns was, from my point of view, not so much that electronic monitoring was being considered or that you were going to increase that, because I too embrace modern technology and, as you know, I was there when we were starting to look at a pilot. I'm not bound by ideology and I think we should be looking at all the best answers for how we can provide the services that are required of government and to do that in the most cost-effective manner.

I think when the announcement came forward, though, it was looked upon as being a wholesale dismissal of an aspect of community corrections that by and large had been seen to be successful over the years, had developed on the provincial level in Ontario over those years, a system we were very proud of, and that some of the major groups in Ontario were sponsors and/or supporters of, the CRC system. I think the shock to a lot of people was the wholesale dismissal of this sort of supervised transition into society. The concern is that this is just a cost-cutting exercise and that we're not looking at the very best ways we can to supervise offenders, especially in that delicate transition period as they go back to society.

I anticipate probably what you're going to say, but do you really think we should just chuck that whole CRC system, or rather have a variety of solutions to this systemic problem?

Dr Todres: I just wanted to answer briefly, and then I'll ask Neil to comment. One of the things I asked the staff to do was to see whether there were empirical research studies that were examining this kind of thing, because we know the community quite well and we know all of those who have devoted decades of their lives to the houses, in fact who were pioneers in the movement. Implicit in the critique is that one form of dealing with this seems to be more superior than others, or at least that's the hypothesis that needs to be tested.

I just wanted to share with you a very interesting doctoral thesis done by a woman named Jody Klein-Saffran as she was completing her doctorate. The subject is

Electronic Monitoring Versus Halfway Houses: A Study of Federal Offenders. Yes, it's federal offenders. It was done in the United States. Let's just assume there are a number of variables that are different. But when I read it, the thing that was most interesting to me was that, after she painfully explained which statistical techniques she was using, there is not a statistically significant difference in recidivism between the people she studied who were in halfway houses and those who were in electronic monitoring. It made no difference.

But what I thought was equally interesting was that there was a statistically significant difference with employability if you are on electronic monitoring. In other words, you had a better chance of sticking to a job and remaining in that job for longer periods of time had you been on an electronic monitoring instrument which permitted you to be employable, whether it's actually looking for a job or being employable.

Now, it's one study, and I would have to sit down with her and others to analyse the generalizability of that study. But I think it's important for the committee and for us to think about it. I know, Frances, you and Neil were speaking to the spectrum or alternatives that have to be offered, so I think I'll turn it over to you, Neil.

Mr Ramsay: Elaine, can I just have a clarification of that study? Is the reason that there was a greater success of employment that they actually lived in their homes, that there was a home address rather than the stigma that it's over at the halfway house?

Dr Todres: And that they were actually at home, the experience of actually being at home and not there and—

Mr Ramsay: The total support.

Dr Todres: Exactly. Which is interesting to think about.

Mr McKerrell: The issue about the appearance that we were sort of giving up on community corrections was distressing. Maybe we should have predicted it, but I was surprised and dismayed at the degree of the reaction in the sense that we were "throwing out" community. Nothing could be further from the truth in fact, given that the vast, vast majority of our people are in the community under supervision.

What we did was we looked at the residential component of our community corrections. That was what we focused on. Yes, there was the financial element; there's no question about that. We looked at the number of people we were putting into the houses and the characteristics of the people we were putting into the houses and the kinds of programming or activities in which they were participating in the houses. Then we said, based on what we're paying for it, is this the best use of the scarce resource?

What we determined was that where there are specialized needs that can best be met by community residential programming, we would keep the range of ad hoc beds where we pay for a residential bed when we need a residential bed, but if somebody can be supervised in the community who doesn't really need the accommodation piece, then so be it. That way we can divert some of the money that was being spent on those block-funded beds over to a range of other community-based alternatives.

So, yes, very much the perception was that we're kind of giving up on the community or cutting the throat of our community corrections, and that wasn't the intention. It was simply to refocus the community corrections based on the residential needs. Have beds for those who need them, but for those who don't need the beds, deal with them in another way, of which EM is only one method.

Mr Ramsay: Mr McKerrell, I think one of the concerns that a lot of people had and probably still have is that people being supervised exclusively through electronic monitoring are no longer going to have that sort of programming opportunity that was present in a CRC. I know you've said in the presentation that the idea is to access community programming that's already out there, but I know there's very good supervision when somebody's just arriving at the CRC, is seeking employment and maybe doesn't have those employment opportunities right there, and meanwhile, during the day, could access at the house a substance abuse program, life skills, all the different programs you have mentioned that some houses offer; some don't. It just seems it is not as tight or as controlled a setting now that the person goes home.

You have talked about potential future alcohol detection systems, because that is a problem with a lot of offenders we talk about here who are appropriate for EM use. The concern is still there: Can we enforce or give that supervision so that we know the offender is getting the programming, is arriving there? It was sort of under one package, and with the accommodation it was in the home, there was support there, there was somebody just to talk to. If you were there and weren't going to work yet, you had 24-hour-a-day supervision.

1700

It's very different from going home and now saying, "Next week, starting Tuesday, I've got to report" at such-and-such a place for life skills training. They are alone for a while there now. If there's family, maybe it's different, but I think that's the concern, that they've gone from a very highly controlled environment to a partially controlled environment with still a human interaction that helps them along the way. That's the concern, that that won't be there any more. What's going to replace that sort of human interaction and helping with that development and transition of the offender?

Mr McKerrell: There are a couple of things there. The first is that you're absolutely right that where we had CRCs in the 18 communities, the 25 houses, when people would go out to them to participate in the kinds of programs I talked about, there was certainly the supportive element from the staff of the house. But we considered that in all the other communities in Ontario where we release people from the institutions, they were still getting into the various programs without the intervention of the people in the houses.

If people are on the electronic monitoring, when they are supposed to go, say, to employment or to a counselling program or whatever, as Mike indicated, the person leaves the institution on a temporary absence program and it becomes a term or a condition of the temporary absence program if they should be participating in the remedial program. As you know, if the individual doesn't

want to participate, then forcing them to participate really is quite pointless. Therefore, if the granting of the permit, the pass, was contingent on participating in a program because we felt the person really needed it even if they didn't admit to it, then frankly they wouldn't get approved for the permit.

If they are out and they're participating in the program or employment or whatever, the electronic monitoring officers are expected to pop in and see the person from time to time. That's the purpose of the drive-by thing, so that they can check and see whether they are at home. There's nothing to prevent them from popping in to the place of employment or doing a telephone check or just following up. So we don't have to just rely on the technology; we also have the dynamic factor to provide some supervision.

Mr Ramsay: I think that will be fine for now, Mr Chair.

Mrs Boyd: Thank you very much. I think this has been very useful. I must say one of the things I regret is that it all happened in a way that led to that public perception. I wish you could give me an explanation as to why on earth, when you had contracts that you had to fulfil anyway, so the money was already being used and there wasn't, as far as I've been able to determine, any person in those halfway houses who would have extended over that period of time, you couldn't have phased out rather than drive in, pick those people up, send them back to an institution and create the kind of havoc that you did. It frankly sours what is probably a very good program, and there will be people in the corrections field, particularly in the community corrections field, who as a result are likely to be much more resistant to the kind of participation they ought to have in this program. I think that's a great regret.

Can you explain to me why on earth you decided to do it that way?

Mr McKerrell: Yes. As you realize, we have annual contracts which go on the basis of the fiscal year, and we make quarterly upfront instalment payments on these block-funded houses. What we were trying to do was to end the contract by invoking the cancellation clause at the end of the third-quarter payment, which was December 31, and then be able to redirect the fourth-quarter payment to other programs.

We knew that each of the contract providers, the service providers, had obligations to meet in terms of severance payments to their staff and winding up the operation, and the only money that was going to be available to them to meet those obligations was the third-quarter payment, which they had just received. By removing the residents from the house, it gave them the opportunity to use the available funding to try to meet their obligations for discharging the staff, as opposed to having to put it into food and other kinds of things like that, extra utilities and stuff. So it was to reduce their operating costs.

We also recognized that some of the staff in the houses would want to leave to go to other jobs as soon as they knew they were going to be out of a job, and that the supervision of the offenders in the residences would require an ongoing staffing presence.

The third thing was that some of the residents might have decided they really didn't want to risk going back to the institution and taken off.

Those were the three reasons for the closure in the way in which it was done.

Mrs Boyd: The reality was that you just wanted to do it too quickly. If you'd had this in place as an alternative, people knew about it and were used to it, you could have done it gradually, in a way that didn't sour the whole introduction of the program.

I think it's a shame, whatever the kind of financial pressures you were under, that you were unable to convince the government. It would have changed the entire way in which this program would be accepted, and I suggest not just by people involved in community corrections areas but by the community itself. The community in general does not like surprises. I think you could have sold this program very effectively and gradually had you done it in a more gradual way.

It's a great shame that this happened, and it's going to take a lot of effort on everybody's part to try and convince people that this is an effective corrections alternative. Often those first impressions are the things that really spoil the kind of commitment. It would seem to me that with this kind of technology you need people committed to community corrections more than ever before. As far as community service orders, as far as people being prepared as employers to accept people with this kind of equipment and with the kind of supervision and so on is concerned, it's going to be really important to win that kind of support.

I certainly hope it's a lesson that any future changes—and I'm sure that as the technology changes there are going to be many new applications over time that will prove to be very useful. I hope everybody takes a lesson from this, because I think it's a real shame it happened the way it happened.

Having said that, I think what we've heard today, everybody should be hearing. I hope you're going to take this show on the road. Quite frankly, it's really important for people in the community to understand what's going on here, because I agree with you. With the changes in Bill C-41, with the kinds of things we're seeing happening in New Brunswick, with the kinds of understanding we have about the vast number of people who are incarcerated who could be earning their own living, could be remaining self-sufficient and aren't because of the way we've done things in the past, it's going to be really important to win support for those methods and to win a sense of this being in the best interests of the convicted persons, not just for monetary reasons. I think the arguments are pretty persuasive.

1710

I'm interested that your form talks about pre-sentencing reports and predisposition reports—you've got a box to check on that as well in your assessment—and it really seems to me that eventually what we would benefit most by in many of those cases would be to have that assessment done on a pre-sentence kind of issue so that people never got into that criminal milieu, if you like, of a jail at all. I know the general public might see that as not sufficient punishment, but I'm sure we'll hear from the

civil liberties people that this kind of monitoring is considered very extreme punishment.

Have you any comments on that? I know that crown attorneys and judges have often said we need the upfront rather than the back-end way of dealing with this kind of innovative sentence.

Ms McKeague: You'll get no argument from us on that either. We are very supportive from our perspective, the policy perspective anyway, of having that kind of risk/needs assessment done at the pre-sentence level, and in lots of ways it does mirror the kinds of questions we're asking in a pre-sentence report and a predisposition report, for young offenders anyway.

We're looking into using the LSI-OR, but we have to be very careful from a legal perspective as well. I'm not a lawyer, so I'm not going to get into the legal arguments here, but there is some indication that there may be an argument against the charter of using that kind of assessment at the pre-sentence level. I don't know the exact ins and outs of it, but one of the things that—

Mrs Boyd: There certainly would be at a pre-conviction level. At a pre-conviction level you'd have some difficulty, it seems to me—

Ms McKeague: Exactly, yes.

Mrs Boyd: —but at a pre-sentence level, once convicted, with the pause before sentencing—

Ms McKeague: Yes. But then some of the offenders aren't convicted if there's been a—there could be just a finding of guilt. So again, we have to be careful at that level as well.

The other thing is our assessors who are doing the LSI-OR can come and give evidence about the indicators they have considered in assessing an offender for risk and needs, but where we have to be careful is our people cannot go and give evidence on the empirical basis for that assessment. I don't know if we want to bring back our researchers every time there's something called into question. But having said all that, it is vital that what we're doing at the pre-sentence level includes an assessment of risk and needs as well, because that's going to give the judge an indication of the areas where we're prepared as a correctional service to intervene with that, again back to the risk management approach.

Mrs Boyd: Yes, because one of the concerns that I heard expressed by many judges was the issue of when they make a finding and make an order for, for example, the temporary absence program, they have no assurance that that's going to happen. Once someone is handed over to corrections, you folks all make that decision, and one of the real issues for judges has always been what that really means to them in terms of sentencing, because the sentence they pass may not be the sentence the person gets, and how appropriate is that? I think that's a lot of the sense of dismay that professionals and the public feel about how this system works. To try and rebuild public confidence in the whole thing, it seems to me that's an issue that needs to be dealt with when it comes to this.

If a judge makes a comment in passing a sentence that this would be the ideal solution, he or she has no way of ensuring that happens at the present time in our system. I think you will find a lot more enthusiastic participation on the part of crowns, defence attorneys and judges in

this whole process, which it seems to me, quite frankly, you need very badly unless we're going to end up like the States, just simply piling people in tiers. It's going to be really important for us to find some mechanism.

I was really encouraged by what the deputy said about this notion of integrating the whole system, because it seems to me very much the problem we have, that the pieces are operating independently and one of the reasons people aren't seeing justice being done is they don't see that continuum of justice either.

Ms McKeague: Right.

Mrs Boyd: It's a bit of a problem.

I did have one other question about the possible future applications, because one of the most dangerous times often for people is at the bail situation. We all know that the Attorney General's ministry is looking at a much more specialized way of looking at bail, to be much more sensitive to the kind of risk factors you're trying to take account of here. Have you any sense of whether they have dealt with the possible legal ramifications of using this kind of mechanism while somebody's on bail?

Mr McKerrell: The preliminary discussions we've had with AG are around the possibility of using the technology while people are on bail and also particularly around the notion of replacing the current use of intermittent sentences, which, as you know, is not a particularly practical sentence from any point of view because the offender's out in the community five days a week and then in the institution two days a week. You have to have beds sitting around to accommodate them and many of them come in, let's say, prepared for the weekend; they either have their drug supplies or they're drunk or whatever it is. It's not a very practical solution.

One of the things we're exploring with the AG, and of course it would need the cooperation of the judiciary, is that when a judge is presented with an argument by defence counsel that this client would be a good candidate for an intermittent sentence, the judge, she or he, could simply give a straight sentence with a recommendation to corrections to use them on the electronic monitoring program.

At the front end of the system, the judges could use electronic monitoring for probation potentially. They could say, "We want someone to go on probation now." We have not branched into that at this point in time. Obviously we want to start out on a small scale. But there are a number of potential applications and we have just begun talking to the AG about that. I think they wanted to see how it worked and learn a little bit more about it before they were prepared to make any commitments.

Mrs Boyd: The issue around use of alcohol: If you're successful with your alcohol monitoring, it may help them in getting some ignition interlock for some of the other situations. It seems to me that's what's needed: Does the technology work, and if it works, how does it work and how can we make it work in the whole realm of places? Particularly, for example, with driving while impaired you've got the really serious problem of potentially injuries and yet if you're able to survive charter challenges on your breathalyser routine, it may make it a little easier for that.

Mr McKerrell: Yes.

The Chair: We have 20 minutes. Mr Tilson and Mr Guzzo are on my list, plus anyone else.

1720

Mr David Tilson (Dufferin-Peel): A couple of questions stemming from some of the questions Mrs Boyd was asking: There's a suggestion of this being Orwellian and I suppose the answer to that is that it's voluntary. I suppose the difficulty is that could lead to something that isn't voluntary, whether it's in pre-probation or bail or whatever. That remains for debate, I suppose.

I'd like to ask a question as to the public perception of these devices. The public perception is that when people are incarcerated, they are paying a price. The whole topic of the fact is that you simply can't go home; in other words, it's a form of deterrence. Whether you're in a halfway house or in a jail, you can't go home. That, it has been believed, is a form of deterrence. I wonder whether in your investigations you discussed that topic; in other words, the perception to the public.

Mr McKerrell: Yes. One of the things we did talk about was, is it going to give the perception that we're getting soft on people? Because of the element of supervision that Mr Ramsay was pointing out that is present in the residences, if we simply put people in their own homes, is that going to give the public cause for concern? What we did was point out that the electronic devices are intrusive. It's not a minor slap on the wrist to be unable to move out of your house on a daily basis except for a specific purpose for however long the sentence is. It is limiting in movement. As Michael said, it doesn't prevent somebody from running away, but then neither did residence in a CRC. People left them all the time, fortunately not too often, but people still leave our institutions from time to time.

Yes, they can leave the house, but not without setting off an alarm. There is a restrictive element there. Although some members of the public may feel it's not sufficiently punishing to individuals to be in their homes, we believe individuals who are placed on that program benefit better in terms of their rehabilitative process by being in the community as opposed to being in an institution. They are confined in their movements and they're not able to go anywhere and do anything they like, so there is that element of intrusiveness.

Mr Tilson: Which leads to another question. There has been and will be criticism of this with respect to the fact that the community resources centres had counselling, therapy and other such things. I gather that the mandate of this philosophy is that you don't necessarily need bricks and mortar to provide these types of things. I think one of the presenters talked about relying on volunteer groups, whether it's John Howard, Elizabeth Fry, whoever. My question is the assurance that these types of things—therapy, alcohol counselling etc—will still be provided.

Mr McKerrell: Yes. These kinds of programs—

Mrs Boyd: Not with your cuts.

Mr Tilson: Marion, you ask your questions and I'll ask my questions. You just sit over there and wait.

Mr McKerrell: Those kinds of counselling programs are available in the community. They were available when we had people in CRCs and they were available to

people on probation, on parole or on the other form of temporary absence, the extended temporary absence program, whereby people are living in their own homes but without the devices.

The fact was that the residents in the CRCs were getting the majority of that type of program outside the house anyway as opposed to its being provided on a specialized basis inside. That's not to say they didn't have group discussions and those kinds of things—they did very much so and there was that supportive environment—but the more specialized treatment counselling programs etc were provided out in the community. The individual went out there and then came back to the house at night.

Mr Tilson: How much time—

The Chair: We have Mr Guzzo and Mr Ouellette behind you.

Mr Tilson: I'll yield.

Mr Garry J. Guzzo (Ottawa-Rideau): Thank you, staff, for the presentation. My first question is to Mr O'Neal. When you look at what you've displayed today, one can think of some extensive applications of this system. I'd like to be reassured by you today that our whip's office hasn't been in contact with you.

Mr O'Neal: About the third generation that administers the shock as well? No.

Mr Guzzo: But I'd like an undertaking also, sir, that if he is, you'd give us a little advance warning.

To Dr Todres, if I might, with regard to the doctoral thesis that you referred to, could you just give me the name again?

Dr Todres: Absolutely. It's Jody Klein-Saffran.

Mr Guzzo: What university was that?

Dr Todres: I'll tell you in a moment. It's on the east coast.

Mr O'Neal: The University of Maryland.

Dr Todres: That's it, 1992.

Mr Guzzo: That was based on the national—

Dr Todres: On federal folk.

Mr O'Neal: In the United States.

Mr Jerry J. Ouellette (Oshawa): A couple of questions: First off, currently, how often are the checks taking place with the people in the program? How often are they checked now?

Mr O'Neal: Are they being checked, in terms of a person going in the residence?

Mr Ouellette: Location or the phones and things like that.

Mr O'Neal: Something that Mr McKerrell alluded to, and something that I probably should have emphasized more in my presentation, was the fact that we're not strictly relying on the technology; we're also relying on telephone calls with some frequency.

Mr Ouellette: That would be included in the checks.

Mr O'Neal: That's right, two forms of it.

Mr Ouellette: How often?

Mr O'Neal: It varies from client to client.

Mr Ouellette: On average then. Are we saying once a day, twice a day, once a week?

Mr O'Neal: It's at least once a week, and we are doing phone calls to the residence and we're doing phone

calls to significant others; for example, the employer. We're doing unannounced visits, actual physical visits to the residence.

Mr Ouellette: Being that there's no cure been found for paedophilia, where would a paedophile fall into this?

Dr Todres: Not at all.

Mr O'Neal: Wouldn't qualify.

Mr Ouellette: Even when individuals are released into the community, though, being that there is no cure, is there not something that is utilized or anticipated to be utilized in the future?

Mr O'Neal: I'm sorry, I can't speak for other approaches to that particular offender group, but it does not fall within the electronic monitoring program as it stands and I know of no plans to apply electronic monitoring to that client group at the present time.

Mr Ouellette: You also mention that there was special training for the staff and the officers. What sort of special training? What's involved in the training?

Mr O'Neal: They had 10 full days of training. We brought experts on the technology from Boulder, Colorado. The equipment we acquired was provided by a consortium of three companies. BI from Boulder is the manufacturer of the equipment, another company in British Columbia has the distribution rights within Canada and another company, Logicsys in Ontario, provides the service and maintenance.

We had their expert trainers come down to give electronic monitoring officers and data entry clerks a very thorough review of how the technology is used. It spanned a weekend. We sent some of the electronic monitoring officers home wearing the technology to generate the alarms and alerts they would then have to deal with the following Monday. It was very much hands-on training and very thorough.

We also employed the experts at our Bell Cairn Staff Training and Development Centre in quite a variety of soft training skills: interviewing techniques, case management techniques, how to make effective referrals to agencies etc. The participants were provided with that kind of training as well to equip them to be able to deal with the challenges facing them in a new program with a new client application.

The feedback we received in the evaluations of the training program from participants was extremely favourable; people felt very prepared and very enthused about starting the new program. What we've experienced so far would suggest that the training was done very well. People have been doing very well; we had no violations at all of a serious nature during the first five weeks of the program.

1730

Mr Leadston: I have a couple of practical questions. You had 17 locations, correct?

Mr O'Neal: That's correct.

Mr Leadston: And 16 are in the program now.

Mr O'Neal: That's correct.

Mr Leadston: Can we be provided with the locations, as a matter of interest?

Mr O'Neal: Where the 16 are right now?

Mr Leadston: And in terms of those locations, are the local policing authorities aware there's an individual in

their municipality on the program, or is it only the probation officer who would be aware?

Mr O'Neal: I believe it's standard practice, before anyone is released on a temporary absence pass, that the local police are made aware of that fact.

Mr Leadston: I notice the hand-held unit was manufactured in Canada.

Mr O'Neal: No. In fact, all the units that were distributed were manufactured in the United States.

Mr Leadston: One had "Made in Canada" on it.

Mr O'Neal: It may have had a seal noting that it is approved for use in Canada. If you like, I have the distribution of the 16 offenders.

Mr Leadston: Maybe you could provide that later to all of us.

Mr O'Neal: Certainly.

Mr Leadston: The unit the member just held up is the drive-by unit.

Mr O'Neal: That's correct.

Mr Leadston: You indicated that if there are two individuals in a location, it would register and monitor them separately.

Mr O'Neal: That's right.

Mr Leadston: Is the individual who has the hand-held unit aware at that point that there are two individuals in a location or in a work environment who are obviously in very close contact and shouldn't be? Is he aware of that, or does it go to the computer?

Mr O'Neal: The electronic monitoring officer is responsible for managing the cases. Consequently, for any offenders out there within their area, they would be responsible for knowing when they're to be in their home and when they're to be at their place of work or school etc.

I used that as an example; it's probably quite unlikely. But if it happened, if an electronic monitoring officer had more than one client who was to be at a particular place of employment at a given time, he or she would be well aware of that. In fact, the reading of that device I distributed would merely confirm that what was supposed to occur was taking place. However, if for some reason a person wearing one of those devices happened to be at the place of employment at the time the electronic monitoring officer was checking on the other individual, the unit would also show the fact that the other ankle transmitter occurred. Perhaps it's even more unlikely for that to happen, but if it did it could be used to help counsel individual A and individual B about not associating, could be used for supervision purposes.

Mr Leadston: The officer knows at that point, gets a reading right then and there in a code he or she is familiar with. It's not as if he has to wait and get a computer printout a week from Tuesday from North Bay.

Mr O'Neal: No. As I mentioned earlier, the electronic monitoring officer also has a cellular phone and could access information on the electronic monitoring software over the phone. I mentioned as well that we had acquired some notebook computers that will allow for remote access. Very shortly, the officers will be able to dial in remotely to the host computer and get full access to all the information on that individual residing on the data-

base without having to be at their place of work or at the institution proper.

Mr Leadston: Have you had any glitches in the program since it's been implemented?

Mr O'Neal: None whatsoever, I'm pleased to report.

Mr Leadston: In terms of violations, the reaction by the monitoring staff, alerting the local authorities, things of that nature?

Mr O'Neal: None whatsoever. We've had no complaints from the local authorities. We've had no instances where we've had a serious violation. We have not had to supervise to the point of bringing a person back into the institution. We've had an instance or two where the person was late returning to their home. We've had a few technical glitches that I would say were addressed by fine-tuning as people were getting comfortable with the technology, but those were all of a minor nature and nothing indicative that the equipment is flawed or that the clients we selected were inappropriate.

Mr Leadston: For the individual who's wearing an ankle bracelet, at the workplace they're aware of the status of that individual?

Mr O'Neal: Yes, they would have to be made aware of it, and I think that's the case with other employment temporary absence passes, that the employer is made aware of that fact.

Mr Leadston: The employer may be made aware, but the employees may not be.

Mr O'Neal: That's correct.

Mr Leadston: In terms of cosmetics, if it's a female, where would you place it? On the ankle?

Mr O'Neal: It's still placed on the ankle, and the reason is that other types of devices affixed to a wrist were not as secure. It's much more difficult to slip a transmitter off one's leg over one's foot than it is for some individuals who are small-boned to slip a device over their hand. Also, the particular technology we use has some proprietary technology that would generate an alarm if the device were removed from the person. Even if an individual were able to slip it over their foot, which I would argue is extremely unlikely unless the person was akin to Houdini—that's not going to happen, and the device would register an alarm, at any rate.

Mr Leadston: If the band is cut—

Mr O'Neal: It generates an alarm.

Mr Leadston: It will, so the band is connected to the same circuitry as the unit.

Mr O'Neal: Yes.

Mr Tilson: There had been a pilot project in Ontario, I believe from 1989 to 1991. Can you tell us briefly what the success or failure of that pilot project was?

Mr McKerrell: At that time we were testing out the technology; it was earlier, obviously, in the evolution of the device. We operated it in only one institution, the Mimico Correctional Centre here in Toronto, and we found that the technology worked just fine. It was on the basis of our own experience plus the other jurisdictions in Canada's collective experience that we decided we should move in this direction.

Mr Ramsay: Mr O'Neal, what's the cost of these units and what's the cost of operating them?

Mr O'Neal: Perhaps the best way to do it, rather than talk about the cost of the specific units, is to talk on a broader level about the cost of the entire program in a given year, assuming a certain number of clients on the program. We had \$3.2 million budgeted for the program; that's assuming all the equipment necessary to have 400 clients on the program on a constant basis. If we had a running balance of 400 clients, we'd be looking at \$3.2 million for the fully burdened costs: the technology, the staffing etc. That works out to approximately \$22 per day per client in fully burdened costs.

Mr Ramsay: To Mr McKerrell, on the programming, is correctional services working with the other ministries of government? One of the concerns brought up earlier is that as government is cutting down on all programming dollars, since you have cut completely this type of programming and are going to rely more on community programming, a lot of that programming is funded by the provincial government, and as we've seen, there are a lot of cuts across the board in other ministries that would provide some of that programming, whether it be the Ministry of Community and Social Services, possibly the Ministry of Health, possibly other government sources. Are you coordinating with other government ministries and agencies as to the availability of programming dollars so they'll be there in the community for your clientele?

Mr McKerrell: It's a matter of ongoing contact with both the Ministry of Health and the Ministry of Community and Social Services for access to correctional clients and these various kinds of programs going on in the community. These issues of access to community-based programming apply whether we're talking about the electronic monitoring or whether it's someone on probation or parole or any of the correctional clients released into the community. These are ongoing negotiations, discussions, points of contact between staff in correctional services and also in the service units of Comsoc and in health.

1740

The staff maintain good levels of contact out across the regions, for want of a better word, in terms of the range of services available, where people can be referred. You're familiar with the blue book process. There's ongoing contact between our front-line staff in correctional services and corresponding front-line staff in health and community and social services and also with the social service agencies so we can get people connected in. As Mike indicated, part of the training for the electronic monitoring officers—and they were all people who had been engaged in different jobs in correctional services already—was to train them in how to access these kinds of programs in the communities.

Mr Ramsay: Of course the concern is that all these well-intentioned people who are points of contact with people from your ministry are under the very same pressures you have been under and will continue to be under, ie, the financial constraints. This is the concern, that even though there seems to be some coordination, their budgets are also shrinking and therefore community programming is going to be shrinking. That's the concern, that we're getting to the point where we're going to lose critical mass in the community and not be able to supply

the programming required for all the various clientele out there.

Mr McKerrell: I'm sure correctional clients won't be given priority over anyone else, and they'll be taking their place in the group of individuals looking for the services in the community.

Dr Todres: One added feature is that we now have a deputy ministers' gang that's dealing with justice matters. We meet on a very regular basis; we actually meet quite frequently. Larry Taman, the deputy AG, and I have spent a fair amount of time with our colleagues talking about the vision for the justice system and making the kinds of points you're making, that the issues we face are not restricted to the Attorney General and the Solicitor. We have a lot of partnerships, and we recognize that they too are looking at streamlining but that we have to, as best we can, ensure that needs are met across all the ministries.

Mrs Boyd: I am curious about the rigidity of the schedule that's set up. When you talk about data entry, I assume part of the data entry is the detailed schedule a person would have.

Mr O'Neal: That's correct.

Mrs Boyd: If, for example, someone missed their bus, is there a way for them to report they missed their bus? Is this interactive with the client?

Mr O'Neal: Yes, it is interactive. The client would be aware of the number to call if there were a problem, in fact would be encouraged to report whenever that kind of situation surfaced. The electronic monitoring officers are available; there is someone at the number the client would call on a 24-hour-a-day basis.

Mrs Boyd: One of the concerns would be that you wouldn't want to set this up for failure, and we all know that however well-thought-out a schedule is, it's going to go wrong once in a while, so part of it is to encourage people to take responsibility for reporting in. I assume part of the sanction if someone weren't where they were supposed to be would be around, "Could you have reported it or not?" and that sort of thing, so it really is an encouragement around that.

Mr O'Neal: We have graduated enforcement built into the program model. It's not a simple case of, "You were five minutes late; therefore you're coming back to the institution." The situation would be assessed against the client's general performance on the program, whether it was the first instance of its kind etc, and would be responded to appropriately.

Mrs Boyd: If the person is at their home, is this a strong enough signal that they could be doing garden work and that sort of thing?

Mr O'Neal: There are certain limitations. I'd prefer not to state what they are, for program integrity purposes. The device was not intended to accommodate a person working the fields or being out of the home proper; it was intended to keep the person in the home.

Mrs Boyd: It's an inside device.

Mr O'Neal: Yes. There may be some exceptions, but again I'd prefer not to describe those in detail.

The Chair: If we're to hear the tape, which is 10 minutes, perhaps Mr O'Neal could assist us in setting up the tape now. Is it in the machine? You're ready to go?

Mr O'Neal: Ready to go, with any luck. I should mention that this video was prepared by the OPP video group, and it's an electronic monitoring officer administering the unit on the leg of a colleague. Any scars on the leg have nothing to do with that unit being affixed.

Video presentation.

The Chair: Dr Todres and staff, we thank you very much for your excellent presentation. We are adjourned until Monday, April 22 at 3:30.

The committee adjourned at 1801.

ERRATUM

No.	Page	Column	Line	Should read:
J-5	J-83	2	60	Mr Tilson: If you look at 32, the problem that I see

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Gilchrist, Steve (Scarborough East / -Est PC) for Mr Ron Johnson
Ouellette, Jerry J. (Oshawa PC) for Mr Doyle

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Tuesday 23 April 1996

Journal des débats (Hansard)

Mardi 23 avril 1996



**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Electronic monitoring

Surveillance électronique

Chair: Gerry Martiniuk
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Tuesday 23 April 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mardi 23 avril 1996

The committee met at 1531 in room 5540, Whitney Block, Toronto.

ELECTRONIC MONITORING

Consideration of the designated matter pursuant to standing order 125, relating to the impact of halfway house closures and the introduction of electronic monitoring.

MINISTRY OF THE ATTORNEY GENERAL,
BRITISH COLUMBIA

The Chair (Mr Gerry Martiniuk): Good afternoon, Mr Cairns. We have one hour. This is an experiment for us in teleconferencing. Perhaps you're familiar with this procedure, but we are not. However, we will hopefully have your presentation, and I thank you very much on behalf of the committee for taking the time and the trouble to appear before us.

As you know, we are studying electronic monitoring devices. We understand that you have some expertise in that area. Therefore, we will let you make your presentation and then each caucus will have a question in rotation. We have one hour in total. I would ask you to proceed and tell us what you would like to tell us.

Mr Jim Cairns: Good afternoon. I really do thank you for the opportunity to address the standing committee as part of your review on the use of electronic monitoring for the supervision of offenders. I've prepared a few brief notes to use as an opening statement, but I suspect you might get more, if I can use the expression, bang for your buck if you ask questions and I respond to the things you have concerns about.

I've also faxed out a small package of information that hopefully has been distributed to you. That can be used as a base document for questions, although I believe that some of the numbers I may use today will be updates from the material that was sent out, given that we've already updated some of our figures.

I've had the opportunity to review the Hansard of your meeting from last Monday, April 15, wherein Mr McKerrill provided background into Ontario's decision to close their community resource centres and introduce electronic monitoring. One of the reasons I wanted to read that Hansard was so that I wouldn't bore you with repeating too much of the information you've already been presented with. I'll try to cut out any duplication.

Just by comparison, BC's corrections is not as large as Ontario's. Our average daily count for 1995-96 was 2,434 inmates, and that's in our combined programs. That's 501 remands and 1,933 sentenced inmates. Our average

provincial sentence was slightly over 115 days with the average length of stay in custody around 62 days. Those are all the statistics I'll deal with now—I do have other stats available to respond to your questions—to give you a bit of a background in comparative sizes between Ontario and BC as corrections go.

Also, we do not have a community residential program on either the exact style or scale that Ontario has—or perhaps had, I should say—although we do have five homes that are under contract to house a total combined average population of only about 15 offenders on any given day. We also operate two community correctional centres, and these are gazetted facilities staffed by correctional officers. They have a combined total of 67 beds and they generally operate at or near capacity. In the past we had several more of what we called CBRCs, community-based residential centres, and the average count there was about three times what it is today, and we had four community correctional centres, and their total capacity was just over 100. The introduction of electronic monitoring allowed us to close those facilities.

I was also interested in reading Ms McKeague's comments regarding the Ontario experience with risk assessment, given that that's an area we have just recently entered into on a formal basis, having developed our own risk assessment tool. Like Ontario, we too have a combined needs assessment as part of our process, and this is where we attempt to identify the criminogenic factors that lead to the offender's behaviour. These are areas where we will target our program and program dollars.

In terms of what we're doing in BC, I could almost quote from Ms McKeague's comments at the end of page J-790, where she speaks about community corrections intervention, the approach that is consistent with risk/needs assessments and provides a continuum from the institution to the community. This is what we've been doing for several years now but without the added benefit of the risk/needs assessment tool, and that's how far we use our electronic monitoring program.

With regard to EMP—that's how we refer to our electronic monitoring program—we originally targeted low-risk, non-violent offenders. To be more specific, we actually directed the program at the typical intermittent server. I'm sure you're familiar with the intermittent server type. Basically they're the kind of offenders of whom the courts were saying these people were suitable or at least acceptable to remain in the community four or five nights a week and only needed to be locked up on a part-time basis, generally weekends. Our approach was to have the court impose a straight-time sentence and then we would put that offender on EMP.

Thus, the original criteria included that the sentence length not exceed three months—90 days—if there was no history of violence and no history of sexual offences. Over time, we've expanded our use to include all provincial-length sentences by establishing a process for addressing exceptional cases. Any case not meeting the established criteria is an exceptional case and is subject to a higher level of decision-making.

Mr O'Neal provided a description of the nuts and bolts of EMP technology. There is no need for me to repeat that to you, because we use the exact same technology you're using. In fact, we use one of the same contractors; one of our contractors is the same as yours. We actually use two types of equipment, but essentially it works the same way. Perhaps different in what we do is that our staff make regular unscheduled visits to the offender's home, and by using the drive-by unit, which I believe you have, we can also check on their places of employment or where programs are taking place, like Alcoholics Anonymous or things like that, they may be going to.

Our staff are equipped with the roadside alcohol screening devices used by police. This is to assist in determining alcohol use. We also use EMP for intermittent servers, the persons who are actually serving intermittent sentences. We only monitor them on the days that the warrant of committal is active, so if they're in custody from Friday to Sunday, we only activate the supervision during those periods of time. This approach was considered impractical during our first three or four years of operations, but because we gained the experience, we found we were able to do this on a limited basis. On weekends we probably have somewhere between 15 and 20 persons serving their intermittent sentences on electronic monitoring.

We have considered the application of electronic monitoring for remandees, but we have not proceeded beyond discussions, mainly due to difficulties in the releasing options for that group. For example, temporary absences aren't available for persons on remand, so we would have to come up with some other mechanism for moving them from the institution to EMP. Similarly, with respect to youth, we've considered the option, but we haven't pursued it for a variety of reasons, and perhaps we could discuss that later if you're interested in that.

At this point—I'm not sure all you want to hear—rather than carry on a one-sided dialogue, you might find it more beneficial if I stopped and fielded any questions you might have, because I really want you to get what's best for you in this scenario. I can ramble on about EMP in British Columbia and not touch on any points that are of interest to you. So if you have questions, and I know you ran out of time with questions in the previous session, or seemed to be challenged for time, if I turn it over to you, I'll be able to answer what questions you have.

Bear in mind that we've had about seven years now of experience with electronic monitoring and are pretty satisfied with the program. I think the information that was sent out to you includes some of the background materials we have on electronic monitoring, so you have some of that kind of detail available to you. In any event, over to you for questions.

1540

Mr David Ramsay (Timiskaming): Thank you, Mr Cairns, for giving us your time here today and the benefit of your expertise. My first question today at the beginning of the rotation would be my concern that I would have here with the closure of our community resource centres, no longer having that sort of transition stage from incarceration to the community. What has been your experience putting people directly on to electronic monitoring without having the benefit of the programming that possibly was there in your community resource centres that you had seven years ago?

Mr Cairns: As I indicated, we haven't completely eliminated that particular option from our programs. We've maintained two community correctional centres and about five community-based residential centres. The CBRCs are contracted programs; the community correctional centres are actually a type of prison that we operate, although they are like a halfway house in a community.

In some of our regions, we decided to eliminate the programs and replace them with EMP. The trouble is, the type of inmates who were necessarily in the halfway houses don't necessarily qualify for EMP, so the option was not lost totally but it was lost for some inmates. That created some problems. We've managed to maintain some programs for that purpose simply because we've run into the situation where inmates who, for all intents and purposes, meet the requirements for EMP don't have a residence to go to. We are looking at some of the places where we have expanded the role of EMP by buying community beds in what would amount to a residential centre, but it was only strictly for lodging purposes. The persons go there on electronic monitoring but are under a contract bed that runs us \$20 a night or something like that to provide them an alternative residence.

From my perspective, I would be somewhat reluctant to consider a wholesale removal of the halfway house or community-based residential centre to be completely replaced by EMP, because not all the persons can necessarily qualify for EMP. It's only a recent move on our part to create these contract beds for EMP people, but we have maintained the other kind of residences all along. From our experience we decided that we didn't think we could necessarily completely eliminate the halfway houses, but we've reduced them substantially.

Mr Gary L. Leadston (Kitchener-Wilmot): Mr Cairns, the figures that you've provided us, that we have this afternoon, do you have an update in terms of the dollars saved by using EMP instead of incarceration or the halfway houses?

Mr Cairns: I'm having a little bit of trouble hearing, but I think you wanted to know the difference in the dollars saved from halfway houses to EMP, or from correctional centres to EMP?

Mr Leadston: Now that you have EMP in place, how much money is the province saving by having that program versus having them incarcerated or in a halfway house?

Mr Cairns: Actually, I rarely use the word "save"; I use the words "cost avoidance." If somebody says you're saving money, somebody's going to want to see the

money at the end of the day. But it's money we're not spending that really is reducing what we've gotten over budget. The difference in the dollar: Our electronic monitoring program runs us in the neighbourhood of \$45 to \$50 a day and our lowest level of custody, which would include the community correctional centres, would run us just over \$100 a day. We're looking at a net cost reduction of \$50 a day. We're currently running a population on electronic monitoring of over 350, so if we were to take those 350 people at \$50 a day and put them all back into custody, quick mathematics would probably bring us to somewhere in the neighbourhood of \$7 million a year or something like that.

Mrs Marion Boyd (London Centre): Thank you very much for your information. I'm curious about two things and I wonder if I could ask you two questions. The first is on the issue of remands. You said, and the statistics that you've sent us indicate, that most of the people—virtually all—who are on remand in your system are in secure remand. In other words, you don't show when there's a delay in trial, obviously, and that's to be expected, but you seem to say that you didn't think electronic monitoring would be suitable for most of those people. Is that because of your restrictions on people having been accused of crimes of violence or sexual assaults? Is it the nature of the crime that means remand people might not be suitable for electronic monitoring?

Mr Cairns: That would be part of it, but not the whole answer. You're quite right in that the vast majority of our remand population is in secure custody, although we're doing some things to change that by moving them to what we call medium security. In fact, we're even looking at one of our community correctional centres, given its remote location, as a possible holding centre for some remanded inmates—obviously the non-violent, low-escape-risk type of remanded inmate.

The situation with electronic monitoring is that we use it here for sentenced offenders, and it's a classification option. The person is given a custodial sentence and then placed on EMP, and we use a temporary absence permit as the legal vehicle to remove him from custody to the program. Our interpretation on the law is that you cannot use a temporary absence permit in the same way to release a remanded offender to a program like electronic monitoring.

One of the things we've considered in our meetings with our crown counsel has been: Can the judge direct persons on to electronic monitoring as a supervision condition for their remanded status? Perhaps by comparison, our remand population is not terribly large. It's 500 of 2,500, so it's 20% of our population. Part of this is that we have a very active bail supervision program. These are persons who probably in the past would have been remanded—not all of them, of course, because our bail supervision program probably has 7,000 or 8,000 people on it—but who report to a community office, a probation office basically, so their bail is supervised by a probation officer.

Unfortunately, it creates a real bipolar effect for our remanded population. Either they're out on the streets on bail supervision or they're in secure custody. We've been trying to find a happy medium. I think we look at that

now with some population in medium custody and some in open custody. A lot of them are people we know, and the day they get sentenced, we classify them to open custody or we may classify them to electronic monitoring.

To shorten the answer, our real concern is more about the legal vehicle and how to put them on the program than it has been about the type of person. We know there are types of persons out there who would qualify, but we're not quite sure how to do it legally.

Mrs Boyd: It really leads very much into my second question, because at federal-provincial-territorial meetings we've talked about ways in which the Criminal Code might better allow a more effective use of electronic monitoring.

A situation arose in British Columbia last October where a person who was under certain conditions as the result of a sentence on wife assault, as I recall, killed his partner. I remember your minister, very new at that time, talking about ways in which, when there are conditions on sentencing that people remain apart from people or a civil restraining order where people remain apart from someone, the use of electronic monitoring might be a way of enforcing that.

I'm curious as to whether there was any more talk of that after the heat of the moment and whether there has been any discussion about ways in which some of those protections could be implemented. We heard last week from the ministry that they were looking at the technology that enabled a signal to be sent if someone came within a certain distance of a place where they shouldn't be, and that sort of thing. I'm curious as to whether you see that as a next step in terms of the technology.

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Mr Cairns: That's an interesting question, because it did cause us a great deal of work to do around looking at that aspect of it. Some of the technology providers claim that their equipment does that. Frankly, from my experiences, the type of equipment we have is similar to what you have, if not exactly the same, and I don't think the equipment would provide the kind of safety net that is being sought after. The last thing I'd want to do is give a victim of spousal assault a false sense of security by saying, "We're going to put this little device in your house, your ex-spouse is going to wear this device on his ankle and as soon as he comes within range, you're going to hear a signal."

First off, the range isn't that far in terms of distance, so how much head time are you going to have? If the range is, say, 1,500 metres, that's not very much range or much time if the person is driving a vehicle. It's more likely, because of obstructions and various things like this, to be about 200 metres. What is the person is going to do if it gives a signal? Are they going to run out of the house or are they going to phone the police? How close do the police have to be in order to be there? What if the offender removed the bracelet outside the range of a receiver where no signal is picked up to say the thing has been removed? We've looked at other things. What if they've wrapped their ankle in tinfoil, for example, so no signal was going out and walked right up to the door?

I would be very reluctant to use it for those purposes until I was convinced that the technology would provide

the security that we're telling these people they're going to have. If I were a victim and I had this thing on, I would probably be more terrified. What happens when you're away from the house, when you're away from the receiver? What if it picks up false signals and you're in a shopping mall and the thing beeps? What are you going to do at that point? I like the concept, but I don't think the technology is currently there that would satisfy me that it would do any good for the victims.

Mrs Boyd: I'm glad to hear you say that. I thought that expectations were being raised far too high for the kind of technology that is there. The issue is, just being warned that someone is in the vicinity doesn't give you the kind of protection you need. I'm glad that's been the decision in British Columbia. I hadn't heard any more about it after I came home in October. I'm glad you've looked into it. It is something we need to be aware of. That business of wrapping the ankle in tin foil I assume doesn't interfere with the program that you have, because no signal is the signal to corrections that there's a problem. I gather that's the issue.

Mr Cairns: Yes. You've done your homework. You're quite right.

Mr Ramsay: Mr Cairns, you had mentioned that in BC you have regular, unscheduled visits. Could you tell us why you've instituted that program, the additional cost for the program and the results of that? What are you validating? What are you finding?

Mr Cairns: It's interesting, because I suspect that has probably been the key or one of the keys to the success of our program. We decided that we weren't prepared. When we instituted this program we looked at a number of American jurisdictions that were doing this. You can imagine seven years or so ago when we looked at this it was still pretty neophyte-type stuff happening even in the United States. We weren't satisfied with the concept of just putting on the bracelet and letting a computer monitor this person. Part of it was that there's a human interactive aspect of a person being in custody, and we didn't want to lose that completely with a person being left at home and somewhat isolated, so we introduced the concept of intensive supervision. That's probably what our program is best described as, intensive supervision enhanced by the use of technology. While we call it electronic monitoring, it's only one component of what we do.

Our officers, as I've indicated, make regularly unscheduled visits so the offender doesn't fall into a pattern of knowing that the officer is going to come every Tuesday afternoon at 4 o'clock. The officer can come at any time. Our officers work 16 hours a day, seven days a week. We have developed a schedule—it's not in the policies that you have; it's in the redrafted stuff that I just finished doing—that is basically a matrix. The matrix, and there's no point in my holding it up in front of you, because I don't think you would see it, says across the top, "Low Needs, Medium Needs, High Needs," and down the side it says, "Low Risk, Medium Risk, High Risk."

You create a matrix like that, and it develops a cycle of reporting schedules. It will say for example that a low-needs, low-risk person is on a two-times cycle, so they'd

be visited at least twice by an officer in an eight-day period; through to the opposite end, which is a high-risk, high-needs person, which would have a four-times cycle, who would be seen a minimum of four times in person during that period of time. As the person is longer on the program, we can reduce some of the in-person contacts to something like a telephone contact or a drive-by contact, where we would just drive by their, say, place of meeting and find out if they're there.

The purposes of doing this, as I've indicated, are (1) the human interaction to go there—making sure how the person is doing, just checking with him to see if we can provide any counselling, any assistance, any referrals to assistance programs, that type of thing; (2) to check on the equipment to make sure that it is still functioning and operating and has not been manipulated in any way, sense or form that hasn't been picked up. It gives us the opportunity to check things like alcohol consumption or drug use, the type of activity that might be going on in the house. We've found that the vast majority of our suspensions from the program are a result of the intervention of the staff attending and finding the person having consumed alcohol or drugs of some kind.

It's also a safety net for persons, particularly if we have females on the program who may be subject to domestic abuse and they're afraid to report that, because what's the result? The result may be that they end up back in custody if they come off the program. But it reinforces the fact that we are going to be around there, and the officer comes in and checks just to make sure that everything in the home is copacetic and that there are no problems developing. Like I said, it's been one of the key parts of our program.

The other key part is that we screen everybody who goes on the program. The screening is made by the same officers who go out and check the people in the community. There's a vested interest in them to screen these people properly because they don't want to walk into a situation where they're going to run into difficulties in making these home visits. It's been an integral part of our program and definitely adds to the cost of the program.

If we were to simply screen people, put the equipment on them and send or deliver them home with the equipment, we could probably reduce our costs by half, but we would also reduce our effectiveness by more than half, I suspect, therefore the end result might be more people in custody. Therefore, the sawoff would be that we wouldn't gain the amount of money we would apparently save on the surface because we wouldn't have as many people on the program, and they wouldn't succeed as well either.

Mr Ramsay: Just to sum up, then, you believe that for an electronic monitoring program to be successful, it's really necessary to have the component of unscheduled visits.

Mr Cairns: We would stand by that. In our opinion, yes, we would. I'm aware of some American programs that have a person who sits on a computer with 1,200 people out in the community, so your cost is about \$4 a day. They're only reporting violations. Frankly, if you're going to do that, why bother with the \$4 to put the piece of equipment on? All it does is provide some curfew. If we want to satisfy the people of British Columbia that the

persons are serving a sentence and are being monitored, I think that's how we've managed to sell the program, and it has been very credibly done.

Mr Ron Johnson (Brantford): I have a couple of questions, actually. Mr Cairns, initially you indicated that the program started in British Columbia for those who were convicted with 90-day sentences and less, non-violent, non-sex offences, and then you expanded the program to include what I would assume were most provincial offences.

Mr Cairns: That's right.

Mr Ron Johnson: When you did that, when you went through that expansion, what kinds of troubles, if any, did you experience and changes in the way you offered the program? How did you cope with that?

Mr Cairns: We didn't really encounter very many difficulties at all. Part of it was, it just evolved as we were going along, we found that with 90-day sentences—and we were having a lot of success with those and we wanted to get the numbers up. We thought, what if we went to a 120-day sentence. So the progression was very small. We went, like I say, from a three-month sentence to a four-month sentence.

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We looked at cases where the person had an assault in their background but the assault was five years ago and we thought, maybe that doesn't impact very much on where they're at today. We thought maybe we can introduce people who have had a minor history of assault cases or the sexual offence was a historical offence, the offence was 15 or 20 years old, that why should it impact on what we're doing today. So we eased ourselves into those kind of situations and as we became more comfortable with that type of population, we merely expanded with each kind of progression. We just didn't decide that we're going to go to six months today and then introduce a six-month program.

The first thing we did was, we provided what we call the exceptional cases, and the exceptional cases were those persons who primarily met all the criteria except for one or two, and we just gave them a higher degree of scrutiny. For example, if the director of the institution was the person who was going to be the decision-maker for the average, run-of-the-mill, standard, regulation-issue EMP case, we would make the district director or the regional director the person responsible for the next level of case. They would review it at a slightly higher level and put those people on.

Then when we came to the point where we became more comfortable with those kind of decisions, we dropped the regional director to a district director in terms of decision-making and we've recently gone now to local directors of centres making the decision on routine cases. It's just been a progression. Once we got past the six-month barrier, we decided, why can't we look at any case and apply the criteria and make a decision based on individual merits rather than on policy. So right now, our current practice is, anybody serving a sentence of six months or less is automatically referred to the electronic monitoring program, regardless of the offence, and the electronic monitoring people make the decision whether they want to take that person or not.

We've got three categories of automatic referral, actually. The first is six months or less. If the person has a court-endorsed order, so the judge has said, "I think this person should be in electronic monitoring," regardless of their offence, we will look at that person. If the person is given a risk assessment in the institution and it comes up low-risk on the institutional assessment, they will also be automatically referred to electronic monitoring. We leave it to the electronic monitoring people to make the decision whether they're going to accept the person on the program or not.

Mr Ron Johnson: Would it be your recommendation that we here go through that same learning curve, that same learning process, or would it be your recommendation that we could adapt the same position you're in now and start with a six-month criterion?

Mr Cairns: I'd be pretty comfortable in saying that you could go to a six-month criterion, although part of ours was acceptance by correctional staff, acceptance by politicians, acceptance by the general public, acceptance by the judicial system, the judges and crowns, this sort of thing. So we'd have the benefit of that period of time to allow that credibility and acceptance to be established. I don't know if we would have had the same degree of success introducing the program as we have it today if we had introduced it seven years ago. We may not have been able to have the program viewed as credibly.

We had a lot of media attention, and a lot of it wasn't positive. There was a lot of negative attention to the concept of electronic monitoring, and from both sides: one that it was too soft; one that it was too harsh—how can you turn a home into a prison, the sort of civil libertarian approach, as opposed to the fact that these guys have just been given a jail sentence, now you're sending them home, how can you get away with doing this?

It's routine now. It's a very acceptable program in British Columbia and I think part of it is that we didn't rush into the program. We took our time, we were conservative in our initial approach. I think because we were successful in that, we were able to expand. I can't suggest to you that you can run out and institute the program exactly as we have it today. I would like to think you could do that, but I'm not quite sure you could do that. I think our experience here will benefit you in Ontario in terms of the fact that if your people there will accept the fact that the program in British Columbia is good for us, then it might be good for you, and you may not have to have as slow growing pains as we have.

I guess I'm a small-c conservative in terms of introducing that kind of a program. I think you have to let it build its own degree of credibility. I'm a bit cautious about you just jumping in and taking our program and cloning it. I'm not sure if it would work.

Mr Ron Johnson: I just have one more quick question, Mr Cairns. You indicated that the unscheduled visits were a very important part of the program in British Columbia. With respect to those, do you have or have you considered non-profit agencies such as the St Leonard's Society doing some of that for you on a contract basis, or is this something that you're doing directly from your ministry?

Mr Cairns: We do it directly from the ministry. It's correctional staff who do that, although in some of our remote areas we've been using contract personnel. In fact, we have a protocol with the RCMP, who provide some of that supervision in areas where we don't have correctional staff. In British Columbia, like all of Canada and certainly Ontario, there are great pockets of small populations and large areas where there's very little population, and we can't service that from a correctional centre. We really operate our electronic monitoring program relatively in conjunction with, in proximity to, our correctional centres. We have gone out and we do have community-based offices attached to probation offices. We have an electronic monitor officer working out of our probation offices in some of our locations. We're using native police or native case workers or native counsellors in some of the remote Indian reservations to provide the supervision in there.

We haven't considered, other than that type of approach, private agencies like John Howard or E. Fry at this point. Part of that is the debate around privatization issues within British Columbia. The Ministry of the Attorney General, corrections branch, made a commitment some time ago that we would not privatize those programs where we believe that the function needs to be carried out by a peace officer, as described in the Criminal Code. Because these people are in custody and are subject to a temporary absence permit and subject to possible apprehension at the time and our people have the authority to suspend the TA and apprehend, for that purpose we have said that's a peace officer's function and we haven't privatized peace officer functions. It may be skirting around, but it's a bit of a political issue and a bit of a sensitive issue here with our labour relations as well.

Mrs Boyd: I can assure you it's a sensitive issue here as well. In view of what you've said about the unscheduled visits, when you gave the cost estimates before, it sounded to me as though you were not adding in those costs or the costs of the counselling, because I notice in your paper here that you talk about offering counselling services. I assume drug and alcohol counselling would be a major part of that but not all of it. I assume there would be certainly in some areas some anger control management and that sort of thing, perhaps even psychotherapy. So I assume that may be part of the program.

When you gave us the figures before, were you estimating into the cost for someone under electronic management simply the cost of the equipment and the actual surveillance, or were you adding in the cost of these unscheduled visits and the counselling that you obviously think are an important part of this?

Mr Cairns: The visits aspect is included in that, because the costs that we talk about are our staffing costs, and that's one of the reasons why the staffing costs are the way they are, because of the visits. So our costs would include the contract for the equipment and the staff to run the program and the vehicles they use and the cellular phones and the radios etc, that sort of thing.

It will include, in some places, some of the programming costs but not necessarily all of them, because we will access programs that are already there in the community, so they're not an add-on cost to the program.

We've been looking at, in our major region, the Fraser region, which has probably our largest EMP—if we've got 300, they'll have 100 on, so roughly a third of the offenders are in that area. They've been doing some cognitive skills things under contract with persons on EMP going to that program. That would not necessarily be costed out in the operations costs, but they would have to account for that in their budgetary process somewhere, and presumably that will be factored into EMP.

They might be able to get away with it because of the high volume of people they have on EMP. In the northern region where we only have, say, 45 people on EMP, it's much more difficult for them to maintain the cost of \$50 a day or under that, where the Fraser region, if you've got 100 or 125 people on EMP, your per diem costs might start dropping to the \$35 range. Therefore, they've got a little bit more leeway with respect to program dollars. But primarily our costs have not included very much in the way of program dollars. We've been trying to get programs that already exist.

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Mrs Boyd: The twin question to that is, do you find it difficult to have people who are on the electronic monitoring accepted into community-based programs for all of these various things and do you have difficulty with employers accepting electronically monitored people into employment? Because obviously one of the issues is to reduce the economic effects on the family, and I know there may be some reluctance at first, but that may be part of what you were talking about, about winning the public over to seeing this as an appropriate program.

Mr Cairns: That's not been an issue for us with respect to jobs or programs. We don't take the responsibility to find jobs for inmates; that's their issue. A lot of them of course have jobs or access to potential jobs before we put them on the program. One of the things we check out is the fact that the job does exist and the people are willing to take them.

We make it one of our criteria that the offender inform the employer that they are on this program, and there may be a circumstance where it's not, but we don't want to get in a situation where, for example, a person is in on a case of theft from an employer and we put them out on electronic monitoring and they go to work for a different employer of the same sort—for example, a shoe store—and they create a theft from the shoe store while they're on the program. The credibility would go down the sewer pretty quickly in that kind of situation.

We make it very clear to the offender that they have to inform the employer that they are on electronic monitoring. We don't do it for them, we don't threaten to do it, but we want to make sure they do that because we need to confirm with the employer that this person can work for them. We try not to make any of the checks at the place of employment, although we may from time to time do that. We've not found that a problem. In fact, we have had employers come to us and say, "If you are releasing people on to EMP, I have a job site that I would be prepared to take people to work on."

It's worked really well because of the flexibility of the program and the fact that if this guy had a drinking problem before, he's not going to have a drinking problem

when he's on EMP. If he had a tardiness problem, he's not going to have a tardiness problem now because we monitor his behaviour. You leave the house at a certain time; you return at a certain time, various things like that. I think we're probably turning out for the employer a better employee while they're on the program. So I think that has worked in our benefit. It's probably not something we consciously did; it's just been a result.

In terms of program, we've never had a problem with going to AA meetings or psychotherapy or anger management or anything like that. That has not been an issue. In fact, we're looking at incorporating more programs that will involve even persons in custody in the community, or even bring community people into the custody centre to do some of this programming, or people on EMP plus a community going to an open custody centre for programming so we can perhaps with contract dollars get more units per dollar without having to chase around to get them. So those are other things we're looking at.

Mr Ramsay: Mr Cairns, in your presentation you had stated that you had made a conscious decision not to extend the program to youth. Could you give us the thinking behind that?

Mr Cairns: Yes. We've looked at it a number of times. Part of the situation is, again we look at it as a custodial program and there are only about 300 or 350 youth in custody in British Columbia. So the number is small. If we use the same ratio of roughly 15% of the sentenced population that we have in the adult side, and then if we're taking 15% of less than 300, the numbers would be pretty small kind of numbers and one would have to justify whether it warranted it.

The other thing is, we've run a number of other programs for youth here, residential attendance programs and alternative-type programs like that, including intensive supervision using community-based individuals, probation officers or contractors, and if we can successfully maintain that group without the added cost of electronic monitoring, we don't see the point of adding the cost for that group.

The other thing is that we've also sort of assessed the fact that youths tend to be more impulsive and more spontaneous and less likely to follow the rules and regulations, and they're pretty stringent rules and regulations that we place on electronic monitoring. We haven't seen a real economic benefit to using it, or even a concept benefit. We also looked at some of the American jurisdictions that have tried it, and they haven't been terribly successful in their experiments with young offenders.

We've stayed away from it except on rare occasions. We have used it on one or two occasions for very specific purposes. An example: We used it on a female young offender who between the time of her offence and the time of sentencing gave birth to a child and was nursing this young child. We have no component in our youth system to allow a young mother to bring her child with her into the youth custody centre, as we do in the adult system. This person was not of the age where we could put her in the adult system. We came up with a community-based home for her and put her on electronic monitoring because of the seriousness of the offence,

which was arson of large-volume dollars that just couldn't warrant putting her on a probation order, so in that case we made an exception.

In the same way, we made an exception on one or two remandees, and these were serious offences with medical conditions that needed to be moved into a hospital situation. To avoid the cost of 24-hour-a-day guard services, we put them on electronic monitoring while they were there, using an emergency medical temporary absence permit for those cases.

We've tended to be a bit flexible where flexibility cannot be seen as the cutting edge of the wedge and setting precedents.

Mr Ramsay: I have another question. Last week in our committee hearings we were given a demonstration of an advance in this technology where we could remotely sense alcohol on the breath. Are you considering the application of this more advanced technology in your programming?

Mr Cairns: "Considering," I guess, is the word, but it's not a strong consideration. We are currently in the process of putting out a new request for proposal for our contract and in that request for proposal we are adding, not necessarily as part of the major components but as sort of an add-on, "Would you let us know what you've got in the way of this type of technology?"

We've talked about alcohol screening. We've talked about—I think it's GPS, or global proximity sensing; we can tell where the person is at any given moment. We're not sure if we want to go quite that far, but there may be reasons we would want to do that. That might be the type of technology we might apply to persons on peace bonds, bail bonds. Ms Boyd had asked questions in that regard. That would be something we might consider, that application under those circumstances, because you get far more advanced warning that the offender is getting close to the victim because of the GPS sensitivity.

We're also looking at standalone units. We already have some of those where they operate without hard-line phone wires, like cell phones. We've also got things called data storage units where they're outside a cell area, so the unit just stores up the information and we have to go and retrieve it. You only find out after the fact, but you get all the information. It's like a watchdog situation.

Then on whatever they've got in the way of upgrades or new stuff, we're asking them to tell us what they've got that we'd be interested in.

Voice recognition is something else we experimented with, which is an interesting concept. I went on the program myself for a weekend to test it and I was quite annoyed with it by the time the weekend was over. It's far more intrusive than the type of passive equipment we use, but it was relatively effective in knowing whether I was there or not. I found it bothersome and I didn't even stay home to pay attention to it. We're looking at that too.

We might look at that for intermittents, for example. Rather than spend the money on equipment, we would just send them home, tell them they're going to stay home for the weekend and then do it by voice-activated messages where it's voice-printing and it confirms their being there.

Those are all technology things we're looking at, but we haven't really made any commitment that we will go that direction other than to look at them.

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Mr David Tilson (Dufferin-Peel): Mr Cairns, you mentioned throughout that you looked at the outset—I think your program was in existence for seven years and I think prior to that—

Mr Cairns: Yes. We started it as our pilot in 1988, and then we made it a final actual program in August 1989, I believe.

Mr Tilson: You indicated that you looked at some of the American jurisdictions and I think even now you're continuing to look at some of the American jurisdictions and what's going on there. There has been, as I understand it, some resistance in some of the United States, indicating that electronic monitoring actually increases prison populations and indeed may lead to increased crime.

Examples that have been given from a recent United States National Institute of Corrections study concluded, "Electronic monitoring is a shambles and requires a thorough examination to measure its impact on crime rates." The American Bar Association indicated there have been a number of lawsuits instituted involving the failure of electronic monitoring to provide public safety, and that these cases were working their way through the system.

Seven years may not be long enough to experience some of those things, but have you seen any signs of those types of criticisms existing in British Columbia?

Mr Cairns: Thankfully, no. I'm not familiar with that study. It would be an interesting one to read. The last point, the lawsuit aspect on the failure to provide public protection, I've never seen any incident of that happening here. There have been, from time to time, persons critical of the program, but I guess we've been rather fortunate: We've had very few people on the program actually arrested or convicted of crimes while they were on the program.

That's not to say it hasn't happened, and we were criticized in one case specifically where the person was dealing drugs out of their home. It was an intermittent server, which is interesting because the person was only monitored on weekends and there was no indication they were actually dealing their drugs only on weekends; they were dealing at other times as well. We were criticized a bit on that case by the local police.

In terms of rise in counts, we certainly experienced a rise in counts but I would say it has probably been no reflection of the electronic monitoring. It's been one of the original concerns. In terms of the history you may have read Steve Mainprize's paper, or some of his work that he's done. He's a PhD in British Columbia who did his doctoral thesis on the sort of net-widening effect of electronic monitoring and was involved in doing that at the time we were establishing our program. He was sort of taking the position of the expansion of social control and how widening the net would create more problems.

Probably that has not proved to be the case—at least our experience would say that—and Steve would probably change his position with respect to that issue now in looking at it. In fact, we talk from time to time because

he teaches criminology in one of the junior colleges in British Columbia and stays abreast of what's happening in electronic monitoring.

There's no indication to me that it's done that, although there's a possibility that a judge might give a person a jail sentence knowing they're going to get EMP rather than give the person probation. It's a bit of a risky thing to do in view of the fact we don't make any guarantees the person will get electronic monitoring, so I can't imagine a defence counsel seeking that kind of an option. The impact probably has not been—if there is an impact it would be fairly low.

In terms of the increase in crime, we're actually showing a decrease in crime in BC, and in fact across Canada in most areas. I wouldn't attribute that to electronic monitoring, but just say that if there's a decrease, electronic monitoring hasn't had any impact on increase in crime. That's a harder one to identify.

Mr Tilson: My question actually is a clarification of a question Mr Ramsay asked, and that was the issue of the mix with respect to halfway houses and electronic monitoring. Are the halfway houses that exist now in British Columbia the same type of halfway houses that existed prior to electronic monitoring coming into being?

Mr Cairns: Some of the homes that existed before are exactly the same. The resources are exactly the same ones. They're the same contractors, same buildings. They're scaled down in terms of the numbers. As I indicated, we only have about 15 people on any given day in our community-based resources.

The two community correctional centres were there prior to. We closed four of those, and those are our correctional centres that are like halfway houses. Those two now have been replaced with new buildings, but it's the same staff, the same concept. Nothing has changed there. The client base may have changed a little bit. They're probably a little harder-core client than what they have taken before because of EMP. It's more an adjustment than anything else.

We've had changes in types of inmates. We've had a real increase, and I suspect you have too in your jurisdiction, in domestic violence cases, so one of our community correctional centres is almost completely populated with domestic violence cases, which is something that wouldn't have happened when the program started.

We've had an increase in sex offenders over the years. I think it's an issue of public awareness and higher efforts by the police and crown to prosecute those types of cases, public awareness on those issues. Two of our open custody centres are almost totally dedicated to sex offenders, where in the past a sex offender would have been in secure custody.

We have changes going on within our populations and the way we deal with them, but in terms of the halfway houses some of the same ones are there; they're just not on the same scale.

Mrs Boyd: In your system, is it voluntary for these people to go on to electronic monitoring? As a supplemental to that, do you use your risk assessment and presentence reports as a way of advising the sentencing judge or justice of the likelihood of the person being eligible for electronic monitoring?

Mr Cairns: On the voluntary aspect, technically, yes, they volunteer. I'm trying to work our guys more to downplaying the voluntary aspect of it, at least by not putting it up front and going to the inmate, "Do you want to go on EMP?" I would go through the whole process and say, "You're going on EMP," and if the inmate says, "No, I don't want to," then he would volunteer not to go on rather than—because we don't ask them about any other kinds of programs, in a sense.

With respect to pre-sentence reports, if the probation officer does a pre-sentence report, they can recommend EMP as part of their pre-sentence report. We also do something we call an EMR, which is an electronic monitoring report, which is a report for court strictly for the purposes of assessing electronic monitoring.

We don't do our risk assessment pre-court, so the risk assessment would not be part of the information that goes before the court. Risk assessment is done after sentencing.

Mr Ramsay: I'd just like to thank Mr Cairns on behalf of the members here. This has been very informative for us. It looks like your program is progressing very well there and we wish you all the best in the future.

Mr Cairns: Thank you. I wish you luck with yours too.

The Chair: On behalf of the committee, Mr Cairns, thank you for taking the trouble. It's been most valuable indeed.

Mr Cairns: My pleasure, and if I can be of any help, let me know.

The committee adjourned at 1628.

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- *Ramsay, David (Timiskaming L)
- *Tilson, David (Dufferin-Peel PC)

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Official Report of Debates (Hansard)

Monday 29 April 1996

Journal des débats (Hansard)

Lundi 29 avril 1996

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Electronic monitoring

Surveillance électronique

Chair: Gerry Martiniuk
Clerk: Donna Bryce

Président : Gerry Martiniuk
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 29 April 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 29 avril 1996

The committee met at 1533 in room 228.

ELECTRONIC MONITORING

Consideration of the designated matter pursuant to standing order 125, relating to the impact of halfway house closures and the introduction of electronic monitoring.

FLORIDA DEPARTMENT OF CORRECTIONS

The Chair (Mr Gerry Martiniuk): Hello, Mr Nimer. How are you? My name is Gerry Martiniuk and I'm the Chairman of the standing committee on administration of justice. We are ready to proceed with our teleconference call.

I would first like to thank you for the background paper you forwarded to us. All members of the committee have read same. We also have forwarded to you, I understand, the Hansard transcript of an expert witness from BC, Mr Cairns, which would indicate to you the thrust of the thoughts of the committee to date.

I would like to thank you on behalf of the committee for taking part in our deliberations. I guess the only question I've been asked is, Mr Ramsay asked how the weather is down there, because it's raining here again.

Mr Richard Nimer: It's beautiful down here. It's about 85.

The Chair: If you would proceed, sir, we would be obliged.

Mr Nimer: Thank you. I appreciate the opportunity. I would like to give you just a brief historical perspective of where our house arrest or Community Control program has come from because in order to understand how we use electronic monitoring and essentially what impact it's had on our program, you really have to understand the basis of the program.

I think if you've looked at some of the stuff I sent you originally, you'll understand that community control, or house arrest—those two terms are synonymous—was created pretty much as a prison diversion program. We were not building a lot of prison beds in the state of Florida in 1983. We actually were in the midst of a crisis, and that is pretty much how the house arrest program became law. The Legislature, the department and other criminal justice officials were looking for ways to alleviate prison crowding. So it's under that kind of scenario that the house arrest program began.

Incidentally, I would mention today that the word "prison diversion" is a dirty word. We don't use that word now, we call them intermediate sanctions, because Florida and much of the country have taken a get-tough policy on crime and we've built quite a lot of prison beds

in the last eight years. So we're now referring to it as an intermediate sanction.

The community control program, which started in 1983, was your basic intensive supervision program. Caseloads at that point were 20 offenders to one officer. We were making a minimum of three contacts during that period, and sometimes four, a week. Two of those would have been in the field and one in the office. There were numerous phone calls per week that were made to the offender or to the offender's employment or to a collateral, a family relative or somebody who knew the individual.

Out of that, and as the department was approached in 1985 by some companies with some crude electronic monitoring devices, essentially that's what became what we call Community Control II. The only difference between Community Control II and Community Control is simply electronic monitoring; there are no other program differences.

From the beginning and when we initially looked at electronic monitoring in 1985 we piloted a tel-cell, which is really an automated calling system, which many of us have become aware of. In our day-to-day lives today, tel-cells are very extensive, the automated phone systems. We also looked at pagers, and really it was kind of an initial form of caller ID. I don't know if you're familiar with that, but when we paged the individual, the computer could tell what phone number we were called back at, so that was one way to check and see if the offender was home and he was calling from the home phone. So that was really the early beginnings of what is now called caller ID.

We also, in 1985 and 1986, experimented with a wristlet system, which was a passive form of electronic monitoring, as well as voice verification. The voice verification system during that period was relatively crude, but it did at least let us know if the individual, the offender, answered the phone and took the voice test.

Then in 1986 we got into non-tamper RF units, which is probably the most widely accepted type of monitoring today, the RF monitoring, which you heard a good deal about last week, and in 1988 we went into what was called the RF tamper alert. That was where if the offender cut the wrist band or tried to circumvent it, in theory it would alert us that the individual tampered with it.

Quite frankly, since 1988, we have not seen too many advances in that current system. Of course you know that they have the alcohol and they have some other passive systems that go with that RF system, but generally speaking there hasn't been a tremendous amount of increase in the technology during that time period.

In 1990, the Florida Legislature sent over their auditing arm or their auditing body, which is known as the internal audit system, and did a review of our "electronic monitoring," Community Control II program. Generally, they believed it was cost-effective. However, we were chastised for not keeping any kind of real comparative analysis between Community Control I and Community Control II. Given that, we instituted a rather large research program at least to look at outcomes.

If you'll glance at page 4, you'll notice that we have a comparison since July 1, 1993, through outcomes of March 25, 1996. When you back out the active caseload, which is at the top of page 4, which you have to do to really get your true percentages on your outcomes, what we have found and we're getting ready to publish—we're going to publish at the end of the year—is that we have seen an 11.3% better result with offenders on Community Control II. This is significant for us, because in theory most offenders who are placed on Community Control II have already violated probation or have violated regular Community Control. Some are placed on the program initially when they are sentenced in court, but a good majority of them are cases that have already violated community supervision. To reiterate, in Florida we only use Community Control or electronic monitoring on those cases that are coming through the judicial circuit at sentencing. We do not use it for prison release cases. We have never used it on the back end, so to speak, of our population. It's been clearly, in this state, a front-end diversion program.

1540

Again, getting back to the 11.3% difference in the outcomes, this is rather significant, because in theory you would have a higher-risk population placed into Community Control II as opposed to regular Community Control. Some of the primary offence categories where we've noticed a difference, which really encompasses pages 5 and 6, includes an 8% better result with sex offenders.

I guess I'd better explain what "better result" is. One, we look at the percentage or the number of offenders who were reduced to probation, because in theory that means they went back to the court, the officer took the case back to the court, and said: "Judge, this case has done well. We'd like to place him on regular probation and get him off of Community Control or Community Control II." We've seen approximately 6%—6.3%—more cases were reduced to probation from Community Control. We also had a 1.1% reduction in absconders. Absconders are the individuals who leave probation; we don't know where they're at. We've also had a slight reduction in new felonies, a slight reduction in misdemeanours and a 1.7% reduction in technical revocation. All told, of all the revocation categories, we see about a 4.5% reduction with Community Control II. When you couple that with the offenders' reduced probation as well as the normal termination, early termination and court termination, where there was also an increase in those counts—very slightly, however—the combined result is an 11.3% difference.

Clearly, if you look at these columns, the number of offenders we're dealing with, you'll see in the very

bottom total in Community Control you're talking about 38,394 through basically it looks like a little bit more than two and a half years, and 3,596 offenders in community control II. So these numbers are now getting to be big enough where we can do some comparative analysis, and quite frankly we were a little bit shocked at the result, because we had traditionally always believed that electronic monitoring was simply surveillance and really didn't have any kind of a psychological or behavioural impact on the offender's actual disposition or outcome. I begin to believe that in fact it has had an impact, and as I go on, and I want to talk about youthful offenders as well, we've really noticed a significant difference.

Just to mention, on pages 5 and 6, what I did is basically the same scenario. I backed out the active population and then compared all those offenders either with electronic monitoring or without, and we saw 8% better result with sex offenders, and we had always believed that. We felt like electronic monitoring was extremely useful with sex offenders. Robbery, we saw a 5.1% better result; other violent crimes, 4.7%; burglary, 4%; drugs, 6%, which kind of shocked me; and theft and forgery, about 2%. So again we're seeing better results with what one would normally classify as a riskier or a higher-risk population.

If you do some detailed evaluation of pages 7 and 8, as we look at youthful offenders or we look at age as a factor, generally older offenders seem to complete both Community Control and Community Control II at a much higher rate than the younger offenders, and that would be true of all aspects of our supervision program. But what was unique is that when I looked at the category that was through age 17, we had a 19.6% better result. When I looked at another large age bracket, which was 18 to 24, we saw an 11.8% better result. This again is very significant for us, because I think now we have the kind of data we need to probably attempt to expand electronic monitoring, and especially might want to look for more use with our youthful offenders, with whom we've had a difficult time completing supervision over the years.

I'll entertain some questions, but let me just mention a couple of other things. Currently, we are paying an average cost of \$2.39 a day for electronic monitoring. At one time, we owned all of our equipment, but it has since gotten off the lease and the manufacturers that came in and replaced this and pretty much just charge us an average of \$2.39 a day for our monitoring and maintenance.

I think we believe that's a fairly low cost, and we're at the end of a five-year contract with two vendors, so we do expect those costs to increase. But at this point, I think clearly you could say the program is cost-effective because in a lot of ways, if you were to place a probation officer or a security guard on the doorstep of that offender's house, there's no way you could afford to do that for \$2.39 a day. So clearly, for that price, we would have to say that electronic monitoring, at this point, has been very cost-effective for the department.

Lastly, I'd like to mention some of the areas that we're looking into right now. In fact, we just received an appropriation from the Florida Legislature to do a pilot program with global positioning satellite tracking, a new

form of tracking. I think it was mentioned last week, one of the manufacturers of that product is a Florida-based company and I personally have been tracked recently with the new device and it seems to work extremely well, and we're really looking at that and trying to use that with our real high-risk cases: our sex offenders, our paedophiles and also our domestic violence cases.

Last year in the state of Florida we had 196 domestic violence murders. We look at this tracking system as a way to provide some additional support for victims, because they too can carry this device and be warned if a stalker or a predator is within a few miles of their particular location.

Those are two areas that we're looking at. We think that's the next step in electronic monitoring and we'll move forward but move forward very slowly on it.

We also see a resurgence nation-wide in voice verification. There are some newer systems out. We are in essence piloting, starting May 6, a new voice verification in two different locations. I'm not sure how that will go but certainly it will have a use with certain types of offenders.

We are also looking at kiosks as a different form of electronic monitoring, pretty much to be utilized with our administrative cases, where we don't have a lot of time to see a lot of low-risk or administrative probationers. We may use the machine that they go to report to, identifies who they are and eventually collects any payments that they may have to make to the state of Florida or to victims.

We still believe RF, the current system out there, will be a viable continual system and we are planning at this point to continue to use RF. As I say, we're going to move very slowly on GPS and make sure it serves our needs.

We've also been contacted by a company involved in camera surveillance and listening devices, and right now we have no plans to move in that particular direction.

Lastly, I would just mention that we have a rather large programming effort in probation and parole. None of the statistics that you have been sent look at whether or not that individual has programming. I can tell you that we have probably, under house arrest, right now 15,000 people. We have another 135,000 under probation. And of those 150,000 offenders, approximately 50,000 will receive programming in one form or another this year, and none of those reports that you received had any variance for programming. In general, if they need it, they get it.

With that, I'll stop.

The Chair: Thank you very much, Mr Nimer. We're going to rotate through the various caucuses, and I would assume Mr Ramsay will go first. Mr Ramsay represents what we call the loyal opposition, which is somewhat of an oxymoron, and he is a former Solicitor General of Ontario. Mr Ramsay, if you would proceed with any questions you have.

1550

Mr David Ramsay (Timiskaming): Thank you very much, Mr Nimer, for joining us today from your 85-degree weather down there in Florida. We're very envious.

I have a few questions and I'll do a few and then pass it on to my colleagues, and I think we'll go back in rotation as we proceed for the rest of our hour. I was wondering, on your electronic monitoring cases, do you combine any home visits with the electronic monitoring system?

Mr Nimer: Yes. They receive the same number of visits as a case that is not on community control. We made that decision early on that we were still going to have the officer go to the house and make the same number of contacts. The current level of contacts are three mandatory per week. Two contacts a week are in the field and then we mandate one contact in the office. That has not changed.

Mr Ramsay: I was really struck by the success rate of your Community Control II versus I and that you feel that just having offenders involved in an electronic monitoring program has some sort of psychological benefit other than just surveillance. Have you done any more work on that?

Mr Nimer: No, we have not, and I'll tell you—

Failure of sound system.

Mr Nimer: What we will do now is I think we'll try and get a little deeper into it, look at prior records. Of course, we've already broken them out by primary offence, but we will look at prior records, we will look at programming and we will look at a program called client management classification, which is what we call CMC, and it's an assessment that's done with all Community Control offenders.

What we've noticed is certainly a difference, almost 18% better outcomes with those offenders who go through that process. But I can tell you that we instituted that in 1993, so just about all of these outcomes—these offenders would have gone through CMC. I don't expect that there will be much difference in what I've told you today, because again, as I mentioned, all offenders who need programs are essentially placed in programs, whether it be drug treatment, educational or vocational, whether it be short-term residential, long-term residential. We have the resources right now in the state where we're able to put most of these people into programs. So I don't think there's going to be much difference.

Mr Ramsay: About those programs, how do you physically deliver those programs? The people are basically under house arrest, so they're in their homes.

Mr Nimer: They're allowed to leave to go to programming. They're allowed to go to church, to programming, allowed about an hour or two hours' worth of shopping a week, and it's all pre-arranged before the week starts.

Mr Ramsay: Do you put on these programs or do you contract out to agencies in the community to deliver these programs for the offenders?

Mr Nimer: Ninety-five per cent of the programs are contracted out.

Mrs Marion Boyd (London Centre): This is Marion Boyd. I'm a member of the third party, also in opposition. I wanted to ask you a couple of questions following along from Mr Ramsay's recent question about programs. When you say they're contracted out, you pay the fees? I notice that you've got a prisoner-pay system in terms of

at least some of the cost of your equipment. Do they pay for their programs as well as the charge for paying for the equipment?

Mr Nimer: Yes, there is a cost. Most of it does not ever come close to paying the total bill but normally it's somewhere in the vicinity of 5% to 10%, 15%. We do have offender copayments when offenders are placed in our residential treatment programs. When they go to work, they pay \$42 a week. They pay for their drug tests. They also pay for any medical exams or medical treatment that they need. The \$42 a week is pretty much what covers their food and transportation.

Outpatient payments, they may pay as much as \$5, \$10, \$15, \$20 a week towards the cost to the department. We have a lot of psychological programs now and mental health treatment programs. They also pay a portion of that, as well as paying cost-of-supervision fees, which can range anywhere from \$40 to \$50 a month. Victim restitution and any other fines or court costs that were imposed—last year we collected almost \$60 million in offender payments for that group of 140,000 people on community-based supervision.

Mrs Boyd: Does that mean that in order to be on this program, one has to be employed or have some private income, because it would seem that this would make this a program that would really only be available to those who could pay those fees otherwise?

Mr Nimer: No, that's not the case. About 20% to 25% of our offenders are indigents and any kind of cost, plus the supervision, electronic monitoring costs, they're all weighed.

On our electronic monitoring cost, we're only authorized by the Legislature to collect up to \$30 a month and I'd say that has only been ordered in about 10% of the cases. The state appropriates almost \$700,000 a year for this program and we collect probably \$50,000 a year from the offenders, so the state has pretty much picked up the tab on electronic monitoring.

Mrs Boyd: I think I may have just not heard entirely what you said there because I thought I understood you in my previous question to say that you take in \$50 million a year in terms of—

Mr Nimer: Yes. We took in almost \$60 million last year, but that is not just house arrests but the 130,000 last year who were on probation and the 15,000 who were on house arrest. So out of approximately—last year it was about 140,000-and-some-odd offenders we collected almost \$60 million, but out of that \$60 million only \$50,000 was placed in the electronic monitoring recovery trust fund. In most cases, the judge does not order them to pay electronic monitoring when they're paying regular cost-of-supervision fees.

Mrs Boyd: So there is a regular cost of supervision to any prisoner?

Mr Nimer: Yes, for anybody. Again, that is weighed depending upon your ability to pay. In Florida we stress employment real strong with offenders on community supervision, and eventually if they're employable, we try to get them to work. If they are under the federal poverty guidelines, then they do not pay cost-of-supervision or any other fees.

Mrs Boyd: I see. There seems to be what looks to me to like a fairly substantial number of people whose

Community Control or Community Control II end with death. Does that mean that this would be one of the reasons why the court might initially suggest Community Control or electronic monitoring, because someone is in very poor health?

Mr Nimer: The parole commission has used that in a couple of cases, but normally what you're seeing there are actually offenders who died while they were under supervision. I don't know. I have no breakdown to know how many were deathly ill and placed on that as opposed to actually—I know of several who have been murdered while they were under supervision.

Mrs Boyd: I think that was what I was trying to get at, whether these were natural deaths or whether in fact these were deaths that occurred in the commission of another crime or as a result of their being a sitting duck for someone who was trying to get them.

Mr Nimer: Again, I have no breakdown of that total, 183 individuals. Like I said, I do know of a couple of cases that were actually murdered or in drug deals that went bad and that sort of thing.

Mrs Boyd: So that means that there's nothing in either of these programs that necessarily would prevent someone from dealing in drugs or buying drugs.

Mr Nimer: That's correct. As I said, the department has basically used electronic monitoring as surveillance. You could certainly deal out of your house while you're on house arrest, and in cases that's happened, but we also did about 380,000 drug tests last year on the supervised population. We have a very, very big drug treatment program, and as long as the judge has ordered that they be drug tested, we will eventually catch them under community supervision. But instead of necessarily suggesting that a court send them to prison, we may tell them to put them into one of our community-based programs.

1600

Mrs Boyd: I see. But the drug testing and alcohol testing are definitely part of this where those are identified problems for these particular convicts?

Mr Nimer: That's correct. Programming is very big in the community-based population here in Florida.

Mrs Boyd: I see. Thank you very much.

Mr Ron Johnson (Brantford): I'm a government member, and I have a couple of quick questions.

Number one, with respect to the electronic monitoring sentencing, you indicated initially that the only individuals who go on the electronic monitoring are those who come through on the sentencing end. With respect to those who could possibly be downgraded, say, from a minimum security facility on to the electronic monitoring program, have you experimented at all in the past with that? If so, what sort of results did you obtain from that?

Mr Nimer: No, we have had no experience whatsoever. There's only about two or three cases that I know of where the parole commission asked us to place that device on them. The Michigan Department of Corrections would probably be your greatest resource. They have a rather large offender release electronic monitoring program. We have no experience in that area.

Mr Ron Johnson: Talking now about the actual disposition of some of the offenders, you indicated you

were somewhat shocked at the result; that the electronic monitoring wasn't just simply surveillance but it actually had a positive effect or impact on the offender's disposition. Can you just elaborate a little bit on that and possibly give us a couple of examples?

Mr Nimer: Again, I think we—when I say “we,” those who are in charge in probation programs—have pretty much taken the position that it doesn't really improve our results. What it did was provide that surveillance. When I say better results, again I'm looking at outcomes, which are violations, those offenders that are reduced probation, and early or normal or court-ordered terminations. When I say there is an 11.3% better result, that means there are more people who favourably finished their Community Control II supervision.

I was rather shocked by that. In theory, you have a higher-risk population because many of those people who are placed on Community Control II have violated regular probation or have violated Community Control. I expected that the numbers would be a little bit worse before they would actually be better.

Mr Ron Johnson: Shifting again to a different issue, have you done any study at all to determine the savings to the state since the implementation of electronic monitoring? Were there substantial savings to the government?

Mr Nimer: In 1988, I believe it was, the National Council on Crime and Delinquency, which is a research group in the United States, came to Florida and did a rather detailed matched group study of those offenders placed on Community Control, those on Community Control II and those placed in prison who have the same sentencing, demographics, priors. They did basically what's called a controlled matched group study.

At that point what they decided was that if you looked at the most stringent definition of the house arrest program, approximately 55% of the people who were placed in this program were true prison diversions, and if you took a less stringent definition, about 85% were prison diversions. When they used the most stringent definition, the cost saving was upwards of \$16 million. That was back in 1988.

I venture to say that it would be rather more significant at this point, not due to a specific amount of work on electronic monitoring. But clearly for a price tag of \$2.39, we're going to say that we have a tremendous benefit by using electronic monitoring with community control cases.

Mr Ron Johnson: Just one final question, Mr Nimer: You indicated as well that the offender in many cases picks up part of the cost for the supervising and for the monitoring. I find the idea intriguing. I want to know the percentage of offenders who are in a position that they can pick up some of those costs.

Mr Nimer: Approximately 75%.

The Chair: Mr Nimer, we're going to rotate again through the three caucus parties. Each has approximately six minutes left. We'll next proceed back to Mr Ramsay.

Mr Ramsay: I have one question and then I'll cede my questions to one of our colleagues, Annamarie Castrilli.

Mr Nimer, I wanted to ask about public acceptance of your Community Control programs. When you started

Community Control I in 1983 and then you graduated on to your second program in 1987, did you start off by putting the variety of offenders you list here—murderers, sex offenders, robbery, burglary, all these folks, drugs, weapons—immediately on the community programs, or did you bring them in over time?

Mr Nimer: No. We don't place any of those people on this program. What this program was designed for was non-violent offenders. What happens in the state of Florida—I think it's important to understand this and then you'll know why there are murderers, robbers, sex offenders and what not in this program—is that 97% of the cases are plea-bargained in the state of Florida. Only 3% of the cases go to trial.

What happens in many of these circumstances is that we get stuck with people on community supervision, probation and house arrest who reach these plea agreements in the circuit court. In many cases it may be a situation where they don't have enough evidence, they don't have a strong case or they want to settle the case because they don't have the time to go to trial.

We did not ask for these types of offenders to be placed. We essentially asked for non-violent—a lot of drug offenders, theft, fraud, forgery, other crimes that were non-violent. That was the general type of offender we looked for when the department approached the court. But what happened is that it became a dumping ground for a lot of other cases. Quite frankly, the public in the state of Florida probably does not know the number of offenders in those primary offence categories who are on house arrest.

Mr Ramsay: Just one last question before I turn it over. I'm curious about public acceptance of this program. It must be that it's your low per diem cost to run this program that convinces people it's okay to put some of these violent criminals on an electronic monitoring program.

Mr Nimer: Again, the electronic monitoring is really a small part of it. It really needs to be couched as the house arrest program. We have 15,000 offenders on house arrest; on any given day, only 1,000 are being electronically monitored.

We did a pretty good PR job when the program started in 1983 of having reporters ride with officers, go to offenders' homes. We did community talks, public talks, to tell people about the program, and essentially it's become an accepted part of the criminal justice system in Florida. Remember, we've got 68,000, almost 70,000 people in prison. I think Florida made the decision that they just could not build their way out of the criminal justice problem, and community supervision has become a viable alternative.

Also, believe it or not, when they did the matched group study of those offenders in these same categories who went to prison, we had better results, lower re-commitment rates, than the offenders who had gone to prison. So there is some sort of general acceptance for probation and parole and for certain groups of offenders being supervised in the community. However, I don't think anybody believes that murderers and manslaughter cases, sex offenders and robbery offenders should be supervised in the community. Again, if you look at those

overall numbers, they're rather small numbers. When you compare, they're probably less than 10% of the entire number of offenders who are placed in the Community Control program.

1610

Ms Annamarie Castrilli (Downsview): Mr Nimer, I want to be very clear as to the response you gave to my colleague David Ramsay. Did I understand you to say that 97% of the cases that you have are plea-bargained?

Mr Nimer: Ninety-seven per cent of the cases that are disposed of through the circuit court in the state of Florida are plea-bargained.

Ms Castrilli: Is that both Community Control I and II?

Mr Nimer: That's everything. That includes all felony dispositions out of the circuit court. That means people who go to prison, people who are placed on community supervision, Community Control I or II, it doesn't matter. Any felony disposition that is sentenced in the state of Florida, 97% of those are plea-bargained; in other words, do not go to trial.

Ms Castrilli: I'm curious. The figures you have on page 4 that deal with the revocations, you have something in the neighbourhood of 40% that are revoked because of new felony or other reasons.

Mr Nimer: The technical violations make up the biggest. In Community Control I, it's 41.7%, in Community Control II, it's 40%. The total revocations for Community Control I equal 58.9%, for Community Control II equal 54.3%. So over half of the people who are placed in this program fail.

Ms Castrilli: How does that happen with all this electronic monitoring that they have?

Mr Nimer: The electronic monitoring in a lot of ways would show you probably more technical violations. If they leave the house, in theory, we're going to know. But the bottom line is, when you look at these statistics, over half of the individuals placed in this program do not make it, whether they're on electronic monitoring or they're not on electronic monitoring.

Ms Castrilli: They go back to jail?

Mr Nimer: In many cases they do. It all depends on where they score on sentencing guidelines. In some cases they may be placed back into Community Control or Community Control II again.

Mrs Boyd: I think you've caused a little consternation here in terms of talking about plea-bargaining for 97%. I gather what you mean is that they obtain a guilty plea.

Mr Nimer: That's correct.

Mrs Boyd: We're at about 84%, and certainly there's no question that both at the federal level and the provincial level here there's a real encouragement to try and resolve cases without those trials.

Mr Nimer: Exactly, and that's what happens in the state of Florida. So what happens in some cases is you may even find a sentencing guideline score that is plea-bargained.

Mrs Boyd: Sure, and part of that whole process is to ensure that you get a punishment or a sanction that matches the likelihood of someone changing. I assume that's part of what the court is trying for, whereas the defence obviously is trying for something that's least inconvenient to the person.

Mr Nimer: That's correct.

Mrs Boyd: One of the issues for us is that the government has decided to close what we called community resource centres, which were residential facilities where people were supervised and counselled and so on within the community, and the announcement was our replacing this with electronic monitoring. I guess we need to know, do you have such community residential facilities in Florida, and if you do, what kind of results are you getting in the recidivism that we're talking about here in terms of your Community Control program?

Mr Nimer: Yes, we do. We have what's called a non-secure drug treatment program. Now again, I'm going to speak only about front-end supervision: probationers, community controllees and those who are coming into the community at the front end. We have about 1,600 beds around the community. It's a six-month program. The success rate is 54.4%. The recommitment rates are pretty low on graduates. Only about 12.8% of the graduates have been recommitted to a term of Florida incarceration after they've graduated. Generally, those rates probably would be a little bit higher than regular Community Control.

Mrs Boyd: So you consider those community resource beds to be quite an effective way, if people qualify for them. I gather the numbers are fairly similar to your electronic monitoring.

Mr Nimer: They're actually a little bit better. As I just pointed out, 54.3% were revoked in Community Control II and 58.8% were revoked in Community Control I. So at 54.8% success in the non-security, yes, we actually had better results with that program. But it's a very intensive program: two months of a modified therapeutic community and four months of work release and treatment overlay. We also have a long-term program. We don't have near as many beds; we only have about 400 of those beds. We have about 380 probation and restitution centre beds, again about a four- to six-month program. Then we have a multitude of outpatient programs that I think I've already mentioned to you.

Mrs Boyd: So a lot of what makes that program more successful is the kind of intensive work and the support that people get to continue with their program in that kind of a situation; they aren't sort of left alone in isolation and you hope they carry on their program. They're in a situation where in fact the program is offered by people who are right there and who are encouraging them to participate.

Mr Nimer: That is correct, and in most cases, in 95% of those cases, that program is court-ordered by the judge. If they don't comply with that court order, they go back to the course for a revocation.

Mrs Boyd: And that's different from the electronic monitoring where there is a program?

Mr Nimer: The electronic monitoring for the most part is court-ordered. We have the administrative ability to place anybody on Community Control on electronic monitoring; however, we cannot have them revoke it. The judge can't violate him for it unless he ordered it to be placed on. That's a little bit different. Most of the time we tell our folks, "Don't put them on electronic monitoring unless the judge has ordered it," because we can't revoke them if they don't comply.

Mrs Boyd: I see. Thank you very much.

The Chair: We have two, Mr Carr and Mr Tilson, sharing approximately six minutes.

Mr David Tilson (Dufferin-Peel): Mr Nimer, David Tilson speaking.

Mr Nimer: Yes, sir.

Mr Tilson: Do I understand then that most of the people who go on electronic monitoring are as a result of a judicial order as opposed to an administrative order?

Mr Nimer: That's correct.

Mr Tilson: And do I also understand you're saying that—I made a note; I don't know whether it's true or not—more than one half fail the process?

Mr Nimer: That's correct.

Mr Tilson: There is a report that came out that indicated there have been a number of lawsuits implemented throughout the United States—I don't know in Florida—that were working their way through the system, of people who were concerned with respect to public safety, private lawsuits. Do you know of any of those?

Mr Nimer: As a matter of fact, I was supposed to testify as an expert witness at a trial last week that was settled out of court. This was a case where somebody circumvented the system and committed some rather heinous crimes. That's about the only one I'm aware of in the state of Florida. There may be some similar, if that's what you're referring to.

Mr Tilson: One more question, then Mr Carr will ask you some questions. One of the concerns that has been expressed to me about electronic monitoring is that the process is not as much of a deterrent. In other words, one of the reasons for a deterrent with respect to crimes committed is that you can't go home or that you shouldn't go home. Do you have a response to that criticism?

Mr Nimer: Well, from a personal standpoint, I believe there are appropriate sanctions for all types of offenders and clearly community-based supervision and electronic monitoring to me has a place. I think you have to take a balanced approach. You cannot lock up everybody. It is fiscally impossible to lock up everybody, nor does everyone need to be locked up. I don't know if that answers your question.

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Mr Tilson: Is this system working well, to your knowledge, throughout the United States?

Mr Nimer: I really don't know. Again, the system works for us, because what we're buying again is surveillance, and at \$2.39 all we're adding is some additional surveillance of our programs and, in that sense, I'd say, yes, we're getting our money's worth. I can't tell you whether it's working. The only thing, as I said, was astounding is we did see some better results, a little bit better results, with those offenders placed on Community Control II as opposed to regular Community Control.

Mr Tilson: Mr Carr has some questions.

Mr Gary Carr (Oakville South): Are you sure? I didn't want to rush you.

Thank you very much. We appreciate the opportunity to do this by long distance. What is the level of assessed risk of some of the offenders? How do you do that in your system? Would you be able to help us with that?

Mr Nimer: Yes. What we instituted was something I alluded to before, and that's that client-management classification system. That's roughly about an hour, hour and a half interview. We have to train officers 40 hours in this process on how to do that interview properly. The end result of that interview is it puts the offender into five different categories.

You learn quite a bit about the offender. You also learn what type of offender he is. There's one particular group of offenders which are essentially sociopaths—it's a small group, about 20%, maybe a little bit less than that—supervised a little bit differently. As soon as they get out of line, the first time, whatever it may be, as insignificant a violation as possible, we go back to court, because we know that this person is not appropriate for community supervision, and that has probably been the most useful tool that we have instituted in this program, because now we know who we're supervising and how to supervise them. Since we've done that, we've noticed an increase in our successful completions of our community control programs. What I would recommend more than anything is the client-management classification system. You then know something, you're able to assess the individual, know what it is they need, know what it is, what danger they may pose to the community as a whole and deal and supervise the case according to that strategy.

Mr Carr: One last quick one: Is it your feeling then that some of the people would've done just as well on the regular probation as they are with electronic monitoring?

Mr Nimer: Yes, in some cases they would've done better. Obviously, the more you supervise a case, sometimes the more likely you're going to find a technical violation. Yes, the more intense you supervise the case, in many cases, the more violations you will have.

Mr Carr: Great. Thank you very much again.

The Chair: We have two minutes per caucus left. I'll go to Mrs Castrilli.

Ms Castrilli: Just one final question, the figures you've given, you've also broken down by age, and I know you state at the beginning that you cannot really tell very much from the outcomes, but I wonder in your experience if you could tell us if there is any distinction between age groups and how they respond to the various types of monitoring.

Mr Nimer: Frankly, we haven't done a whole lot of investigation other than what you see on pages 7 and 8. What we found is what we've always known, that younger offenders don't complete programs as well as older offenders. What was interesting to us, which I thought was rather unusual, is that we have better results with offenders placed on electronic monitoring in the age groups of 17 and younger and 18 to 24, and they were rather significant differences. However, when you back out the active caseloads on those pages, the actual sampling group is pretty small.

In the case of 17 and younger, it's only 204 individuals. In the case of—again, I'm on page 8, in the category of 18 to 24, it's only 631 versus 1,717 with no electronic monitoring and 6,626 with no electronic monitoring.

Ms Castrilli: Have you done any follow-up to see what happens after their release and if they re-offend?

Mr Nimer: No, we have not. The only thing we do recommitment studies on are our residential treatment programs. We track recommitments on those.

Mrs Boyd: Would you say that the experience you've had—and I'm sure you've talked to people in other states—is fairly similar in most jurisdictions, or do you think it depends on the mix of different programs that's offered?

Mr Nimer: I really don't know. I think different jurisdictions use it for different reasons. I'm a big believer in programming. We've spent a lot of years and a lot of time in programming, so I would say yes, it's a combination. But what is interesting again, when you look at these numbers, is to see without looking at programming or any variables, a slight increase of approximately 11.3% with groups with electronic monitoring. I was rather astounded by that.

Mrs Boyd: Would you say the population that is committed to prison as a result of your having available both community resource programs and Community Control programs, both of them, that the population that is actually committed to prison would represent very serious offenders, much more serious offenders than these, and people whose prognosis for being restored or rehabilitated is less for that general group, or is it sort of a toss-up, depending on the court and what the court decides?

Mr Nimer: I really can't answer that question. We know one thing for sure, that yes, the whole idea in Florida was to save the prison beds for violent offenders and attempt to deal with non-violent offenders as much as we could in the community. I think we have been successful. Our prison admissions for drugs have dropped; our admissions to community supervision for drugs have increased; we've poured money into it and we've been successful, let's say, for instance, in reducing the number of drug offenders going to prison. The whole idea is to lock up the bad guys and try to deal with the rest of them in the community. If that's the plan, then you appropriate your resources to deal with it, and that's what we try to do in the state of Florida.

The Chair: That concludes all our questions, sir. On behalf of the committee, may I thank you very much for taking part. You've had some valuable input into our committee's deliberation and I thank you for your cooperation.

Mr Nimer: Thank you very much.

The Chair: Our next witnesses are not yet here, so I suggest a five-minute recess, and we'll reconvene at 25 to 5.

The committee recessed from 1628 to 1635.

OPERATION SPRINGBOARD

The Chair: The next witnesses we will hear are from Operation Springboard, Howard Pearl and Margaret Stanowski. Welcome to the justice committee. I'm pleased you got here early. You're slated for 5, but you have the opportunity to get out early. I would ask you to make your presentation, and perhaps you could leave a little time for various questions from the members of our committee.

Ms Marg Stanowski: That's great. Like the early bird getting the worm, I guess we're getting rewarded today. It's great to be here.

My name is Marg Stanowski. I'm the executive director of Operation Springboard. With me is Howard Pearl, a senior volunteer board member of Springboard. We both appreciate the opportunity to present our organizational views on the closure of halfway houses and the introduction of electronic monitoring.

Operation Springboard has been in existence since 1969 and is a charitable organization dedicated to making our communities safer places in which to live. We work with thousands of offenders each year to prevent the recurrence of crime. Our programs also extend to preventing crime before it occurs.

One of our halfway houses, Glenn Thompson, was closed in October 1995. It was established in 1981 and serviced special-need offenders with physical and developmental handicaps. Our organization is committed to strategies that work in reducing recidivism and we are receptive to the evolution of new approaches in making our communities safer. In this regard, we are not opposed to the introduction of electronic monitoring as a continuum of correctional options and certainly embrace the use of Ontario's LSI to predict offender risk and need. We are adamant, however, in our position that the province has lost an affordable and effective correctional resource by its decision to close halfway houses.

In assessing the question before this committee today, it is helpful to consider two key factors driving Ontario's correctional strategy: (1) Given limited revenue and resources, we need to invest wisely in strategies that will be most likely to bring about long-term community safety; and (2) costly resources such as jails, intensive supervision and treatment should be focused on those who pose the greatest threat to safety.

The closure of halfway houses and the introduction of electronic monitoring cannot be fully rationalized with this correctional strategy. First, let us examine the assumptions made in this decision. Electronic monitoring was introduced to replace halfway houses as a more affordable means to reintegrate offenders serving sentences of less than two years. The decision assumes that these two programs are interchangeable. This is simply not the case. Halfway houses can assess and immediately respond to inappropriate behaviour and attitudes and other dynamic risk factors that will reduce the likelihood of reoffending. Halfway houses represent an instrumental strategy in dealing with the responsible integration of higher-risk and -need offenders.

Research confirms that higher-risk and higher-need offenders will be 50% less likely to reoffend than when released without such reintegrative supports. If the same number of offenders were serviced between the two programs, electronic monitoring is reported to be about 25% of the cost of halfway houses. The system of electronic monitoring can determine that the offender is not where he or she is supposed to be and will alert authorities to this fact.

The level of service and supervision between the strategies cannot, in our opinion, be considered interchangeable. With the decision to replace one intervention

with the other, it was also assumed that offenders in halfway houses would qualify for electronic monitoring in that they had good homes to go to and could access needed programs for their problems in the community. The criteria for electronic monitoring, though, are restrictive and cannot consider many of the offenders who were released to halfway houses. I will acknowledge that cautious decision-making, particularly in the last year, was placing offenders in halfway houses who may not have needed this intensive supervision, yet this should not have led to the conclusion that these homes lost their unique value in the offender reintegration process and capacity to reduce recidivism.

Electronic monitoring and halfway houses are far less expensive than jail, which is about \$140 per day, and both these strategies can be substantiated in the emerging correctional strategy. The question then becomes, what types of offenders warrant and need these two distinct interventions or a combination of both? For what purpose are we investing in these options: as a purchase to promote safety or to provide alternatives to jail?

Our written brief explains that electronic monitoring has not, in the Canadian experience, been introduced as a standalone model to reintegrate offenders. It is increasingly being utilized as an affordable alternative to jail and to substantiate release of offenders serving very short sentences, say, of about 30 days or less. Ontario, I think you're aware, has about 50% of its inmate populations serving sentences of less than 30 days. Electronic monitoring was not introduced for this purpose but rather to replace halfway houses. The current assessment process for electronic monitoring would limit even its timely use for almost half of the correctional population and, as stated above, could prolong the costly use of custody for those offenders who otherwise would have been considered for release to a halfway house.

We urge this committee to recognize that halfway houses represent a prudent and affordable investment for community safety for offenders who clearly would not qualify for electronic monitoring or parole consideration. Prolonging incarceration for offenders needing supports and daily supervision in their reintegration who will be released ultimately at two thirds of their sentence does not make economic sense, nor will the investment result in more safety for our communities.

Mr Howard Pearl: My name is Howard Pearl. I'm quite pleased to be here and appreciate the opportunity to make my comments before this esteemed committee. I am concerned about the idea of doing away with halfway houses in favour of electronic monitoring.

I'm concerned first as a father and as a homeowner and secondly as a businessman who employs over 100 people in this community and generates approximately \$20 million worth of top-line revenue, leaving a considerable deposit in both provincial and federal tax bases. I'm also concerned about the costs versus benefits of this particular plan. As a businessman, I appreciate the value that comes from wise investments. Using a bottom-line analogy, does this government think the capital invested in electronic monitoring will result in more safety? I do not believe that electronic monitoring is a prudent investment in securing the community's safety, as the

candidates who will be allowed to participate in this program are usually either low-risk or low-need offenders.

Frankly, I don't think that halfway houses and electronic monitoring are interchangeable. While a bank machine can easily replace a bank teller, I'm not so confident that electronic monitoring or an electronic bracelet can do the same thing. The machine has a default. It simply keeps the cash if it detects a problem. Electronic monitoring can only inform; it cannot predict, nor can it prevent.

You really would be setting up this province, I think, to lose an invaluable resource to provide a reintegration system and reintegration programs to high-risk and high-needs offenders. As a board member of Operation Springboard for over six years, I volunteer my time to support the delivery of programs that will provide the community, including me and my family, with greater safety from released offenders.

The people we're keeping in prisons for longer periods of time and then release at the end of their sentence are the very people we need to supervise. Punishing these offenders by lengthening their incarceration, without any controls upon their release, does not make sense to me. And I want to make it clear that I am not an offender advocate; I am an advocate of a safer community.

Anger management and substance abuse characterize many of these people, who will be allowed to come into our neighbourhoods at the end of their sentence without any process of reintegration. These angry people, unpredictable as they may be, are simply loose cannons in many cases. I ask you, each and every member of this committee, if you want to be or if you want your son or your daughter or your husband or your wife to be the first person an offender sees upon release without any form of reintegration process into this city or into this province. Perhaps they have or have not stopped along the way for a libation, if that's their problem; I don't really know. I do know it concerns me.

I wonder if this committee believes you can exchange human intervention, human observation, interplay and communication for electronic monitoring alone. My sense is that it's a huge mistake and an invitation to a front-page news story.

I wonder also if this committee feels that the government can abdicate its responsibility to the community just because a person's sentence runs out—just open the door and set someone free with no attempt to deinstitutionalize or reintegrate them. If that's the case, I believe this committee is endorsing the fact that: "It's okay to offend as long as you don't do it while you're in our charge. Once your time has expired, we're not interested in what it is you do."

I'm suggesting that we be a little more realistic and be responsible, meaning that we have the ability to respond properly and invest in the corrections in an appropriate manner that keeps our communities safe. Part of that system is allowing for a period of reintegration of offenders. I thank you very much.

The Chair: Thank you. We'll start the rotation with Mr Ramsay. You have approximately five minutes per caucus.

Mr Ramsay: Thank you very much for making your presentation today. I brought this before the committee because one of the concerns we in the Liberal caucus have is that the government is saying the programming that up till now has been delivered by the CRCs will still be there. When I asked them where's that going to come from, they would rely on the programming that's in the community. But we all know, from all the cutbacks happening, that many of those community groups we've relied on to deliver some of that program are also being cut back. Where do you foresee that these offenders in transition are going to receive this help?

Ms Stanowski: The issue of access to available services is really the crux of this. As I understand, there would be some attempts through correctional officers at the point of discharge to find alternatives to augment and enrich and would become part of the temporary absence agreement in that, "You will accept drug and alcohol treatment."

The difficulty as practitioners in a community-based agency, as you mentioned, is that the infrastructure has become eroded. Community agencies normally do not prioritize intake of correctional clients. They're riskier to accept. Often, the role of the CRC staff and community-based agencies has been to do that advocacy, if you will, to have that client prioritized. Electronic monitoring hasn't been in effect that long yet in terms of the role the correctional officer based in an institution could have in placement of that individual in the community. I'm very concerned about that in terms of access, not only to the availability of those services.

1650

Ms Castrilli: Thank you very much, Mr Pearl and Ms Stanowski. I'd like to go back to something you said earlier and get some clarification. We've had some evidence before the committee that the cost of electronic monitoring is relatively low. A representative from the state of Florida indicated earlier that it was \$2.39 a day. You may have heard that before. I asked him whether they had looked at the rate of reoffence and whether they calculated that into their cost when they looked at the overall cost. You indicated that if you were to look at factors such as that, the actual cost of a halfway house would be 25% of our current monitoring. I wonder if you could elaborate on that and what you mean.

Ms Stanowski: At the beginning of all this, my math was that 400 beds were available within those 25 halfway houses. Those beds were closed down. The assumption was that \$3 million to \$3.5 million was required for the capital investments for EM and for the correctional officers who are hired at an annual salary.

From how Mr Runciman has described it—again, I haven't spoken with him; I read his press release—it would be in the range of about \$3 million or so versus \$11 million for halfway houses, so I've rounded it off to indicate about that. But that assumes that 400 clients, offenders, are participating. I think you've heard evidence that, what, about 50 have gone through the program, give or take?

Ms Castrilli: About that, yes.

Ms Stanowski: As to the upfront investment right now, you'd probably be looking at a per diem cost of

about \$400 a day for each person on EM in this province. The curve will go down because our upfront investment is for getting people on line with the system, as I've understood the problem to be.

Ms Castrilli: Mr Pearl, you talked about the very vital function that halfway houses fulfil in anger management and in substance abuse and controlling that and providing a buffer to society. I'm just wondering if you think there are any circumstances in which electronic monitoring would be acceptable.

Mr Pearl: I have no problem with electronic monitoring. My concern is that as the government reduces its funding for halfway houses and as the resource becomes more difficult to access, we're going to become increasingly reliant on electronic monitoring as a substitute. As somebody in a community fraught with problems, I see the electronic monitoring almost as an excuse: "Well, that's fine. We've got a ring around the collar and we don't have to worry about it." That's not the case.

In many ways, this issue is no less important than health care. It is health care. It's the health of this community. It's the health of the people who live and work in the community and keep it vital. I believe there is a place for electronic monitoring in this community and there's probably a number of good uses for it, but not as an either/or solution to the halfway process.

Ms Castrilli: And not at the expense of safety.

Mr Pearl: Absolutely not at the expense of safety.

Mrs Boyd: Thank you very much for coming. I've worked quite closely with the women's community resource centre in my own community and really know, Margaret, that this problem of prioritizing services in a community whose services are usually stretched takes a lot of negotiation. We have that kind of agreement at the battered women's advocacy clinic with our community resource centre, because we knew a high proportion, virtually 100%, of the women who went through that community resource centre had been battered; in fact there was no question but that their victimization had a good deal to do with what was going on.

We also worked with the St Leonard's operation, Egerton Centre, talking to the men in those centres around the violence issues, holding out the hope that they could change their behaviour but that there were certain things that needed to happen.

I really have worked with that kind of thing, and what really strikes me is that the kind of assistance you give and the kind of support that's offered is very different from the occasional supervision envisioned under the electronic monitoring kind of situation.

I expect that's even more so if you'd tell us a little bit more about Glenn Thompson House. This is a group of people who have very special problems and wouldn't do well in the prison system because it wouldn't speak to them about changing their behaviour, but who also wouldn't do particularly well with an electronic monitoring system because there's none of that necessary preventive work. Can you tell us a bit more about that?

Ms Stanowski: Yes. In fact this has been a real serious issue among our colleagues in this field. When you examine the needs of those special offenders, those with developmental disabilities, physical disabilities, who

are clearly marginalized and do not enjoy the same access of even mainstream, if you can call them that, offenders—here was a program designed for that offender in mind and really provided additional supports to promote that reintegrative process, which, as you can appreciate, becomes further compounded when a person with a mental health problem also has a correctional record; it's a double whammy. Add an addiction to that or a dual diagnosis in some areas, and you've got a real management problem.

What we've seen happen through this is that we've lost that form of intervention, not only with other offenders needing that daily supervision and assessment but with those special-needs offenders. We're very concerned about where they will fall. In terms of further cracks within the system, will they be the ones who will be prolonged in terms of their custody stay as opposed to having access to electronic monitoring?

Mrs Boyd: One of the problems is that even having people in that category understand the importance of some of the compliance parts is really quite difficult, isn't it? We hear those working in the criminal justice system, certainly those who work in the jails, talking about the numbers of people as a result of deinstitutionalization both from developmentally handicapped institutions and mental health institutions; that the proportion of those people incarcerated and in the first stages, just in the first instance before they've even been convicted, is growing. Is that your sense, and is it your sense that not having those community supports available is going to exacerbate the problem and make it that much more difficult for those folks?

Ms Stanowski: Very much so. The principle of our brief is that an effective correctional system can have an affordable continuum of options to deal with a variety of issues. This is not about pandering to inmates or to special-needs offenders. It's about investing in their stability so they can become contributing members of this community.

Halfway homes represented a vital link. When you consider the special needs, the issues of illiteracy are just rampant. At any given point, you could have 50% of those clients at Glenn Thompson House who could not read or write, and even getting to a service required supports; if they were looking at a referral, those supports were there for them. We haven't seen how the correctional strategy or framework will evolve so that these offenders are not left further marginalized and further likely to commit another offence.

Mrs Boyd: And they're always going to get out, because when we look at the provincial system, we're looking at a very short time. I think that was your point, Mr Pearl, that we have a group of people in provincial jails who will get out, and you're saying community safety dictates more supervision rather than less.

Mr Pearl: I don't think you can alter behaviour with electronic supervision. Even if you create for them a schedule of rehabilitative programs, you exchange the cost of transportation and the administration of making sure they get there and depart on time, with a place to sleep at night where you can continue to expose them to a positive environment and try to alter some of those

behavioural protocols. You simply can't do it with electronic monitoring alone.

1700

Mr Tilson: Perhaps you can tell us a bit about Operation Springboard, how many people you serve in a year.

Ms Stanowski: I'd be glad to. This past year, we provided service to 9,200 individuals, which included individuals who were on a form of sanction or referral by the court. It includes young offenders; we have six homes for young offenders in this province. We have two specialized homes for individuals with developmental and physical handicaps that are voluntary residences, non-sanctioned, but most of those offenders have been involved in the criminal justice system. Youth employment counselling, non-profit housing, community service orders—I'm probably forgetting something.

Mr Pearl: Choices.

Ms Stanowski: Choices, yes, our crime prevention program in our elementary school in Scarborough that deals with grades 7 and 8, trying to get to them before they become involved.

Mr Tilson: Are these programs you offer in-house or do you go outside for those?

Ms Stanowski: Our program model is that we have available in our residential programs about four out of seven nights in-house. We have one night for literacy, we have one night for a specialized drug and alcohol presentation, life skills, as well as recreation, so it really is a span of supports as well as brokering those referrals. If a client has specialized mental health problems, we would probably make that referral out.

Mr Tilson: I understand you to suggest that in some cases individuals could be on electronic monitoring and that others should be in the community resource centres or halfway houses. Do I understand that to be what you're saying?

Ms Stanowski: I am stating that the purpose and framework for the introduction, that electronic monitoring would replace halfway houses, we don't consider to be a sound exchange. We consider that electronic monitoring could be further explored, for instance, as in BC, where they're looking at it clearly as an alternative to custody, that the person comes into custody and he's timely released under the electronic monitoring program.

If you examine that strategy to reduce the number of jail cells, that is the only place you're going to find significant savings to reinvest: a cap on jails or a reduction in the number of cells. We're suggesting electronic monitoring, if introduced with that purpose, to shift costs, could be appropriate for inmates serving less than a 60-day sentence, a 30-day sentence. It may well be appropriate for offenders who are in that next stage of transition back into the community, based on a dollar saving as well as appropriateness, assuming the client has a house to live in and has a phone to plug into.

Mr Tilson: What percentage of people who come to you should not be in halfway houses?

Ms Stanowski: We have six homes, eight group homes. Right now, I would say every one of them needs to be where they're at. Occasionally, you'll see a young offender who may not be appropriate. Under the CRC

model, given the tragedy of that young police officer who was shot, we've found since that tragedy that the cautiousness in decision-making really became magnified, and releases that may have been previously considered in years prior were not being made any more; you found utilizations being affected, and there were offenders being placed there who were safe bets, for whom the likelihood of reoffending was very slim.

At any given point—let's thrown a reasonable number—about 25% perhaps should not have been in those CRCs. Yet my concern, in reading evidence, is that that very fact has been used to indicate that electronic monitoring can thereby be interchangeable. I think the macro picture of it has to be examined.

Mr Tilson: We have been given estimates—and I agree, estimates—that the cost of electronic monitoring per diem is \$22 and the per diem with respect to halfway houses is approximately \$80.

Ms Stanowski: In that range, yes.

Mr Tilson: That takes into consideration that some of the individuals who normally might qualify for halfway houses wouldn't qualify for electronic monitoring. Is that your understanding?

Ms Stanowski: Yes. Under the present Ontario criteria, who can apply is extremely limited. The offenders who were living in the halfway houses very successfully—we were enjoying about a 92% success rate—were no longer eligible to apply for electronic monitoring.

Mr Tilson: That's what I'm trying to speak to you on and question you on, that the public criticism that has come out is that there are people in halfway houses who shouldn't be there but should be incarcerated, that we've gone too soft.

Ms Stanowski: This is what I hope we're here to do too, to provide some balance. If, for instance, an offender has a two-year sentence and is released at the 15-month point to reside in a halfway house for three months, with assistance to find employment, to deal with his drug/alcohol problem, to assess how he's going to perform in the community—

Mr Tilson: Yes, but you can't do too much, because they're only in there for a short period of time.

Ms Stanowski: Exactly.

Mr Tilson: My final question, and Mr Guzzo has some questions—

The Chair: I'm sorry, Mr Tilson, your time is up. I apologize to Mr Guzzo that we do not have time. That is the allotted time for our caucus.

I'd like to thank Mr Pearl and Ms Stanowski for your attendance before our committee and your input. It's most valuable.

The 4:30 appointment has been rescheduled to 5 tomorrow—Professor Anthony Doob and Dianne Martin—and therefore we have concluded our hearings today. We'll adjourn.

The committee adjourned at 1706.

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Howard Pearl, chair of communications, board of directors	

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Tuesday 30 April 1996

Journal des débats (Hansard)

Mardi 30 avril 1996

Standing committee on
administration of justice

Comité permanent de
l'administration de la justice

Electronic monitoring

Surveillance électronique

Chair: Gerry Martiniuk
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Tuesday 30 April 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mardi 30 avril 1996

The committee met at 1533 in room 228.

ELECTRONIC MONITORING

Consideration of the designated matter pursuant to standing order 125, relating to the impact of halfway house closures and the introduction of electronic monitoring.

ANTHONY DOOB
DIANNE MARTIN

The Chair (Mr Gerry Martiniuk): We have a quorum. If we could proceed with the standing committee on administration of justice. Our first presenters are not present. However, Professor Doob and Dianne Martin are both here, slated for 5 o'clock. They arrived early to make sure they were heard and we'll take you first if we may.

I welcome you to the committee and, as you know, the committee is studying the closing of halfway houses and the use of electronic monitoring devices. I understand you have some expertise in that area and I'd appreciate your proceeding.

Dr Anthony Doob: Thank you very much. First of all, I'd like to apologize for my own personal mistake—I won't even share that with Dianne—for not being here yesterday. I cleverly wrote it down as 4:30 today, notwithstanding the fact that I had been told two or three times and faxed that it was yesterday. So it was completely my error and I apologize to the committee for that.

I thought the two of us will be sharing the time before you, and in introducing the topic of electronic monitoring and halfway houses, we thought it would be useful to talk about where probably all of us in the room can agree on this sort of general issue. Really there are three points we would like to make about this.

The first is that offenders should be held accountable for what they've done. I think all of us can understand that and accept that.

The second point we would like to make is that scarce correctional resources should be used wisely and sensibly, and I suppose the emphasis really should be on the fact that these resources are scarce.

The third point I think really follows from the second, and that is that the criminal justice system should be focusing on serious crime, those areas of a substantial amount of crime in our society, and that really our priorities have to be on serious crime and in particular on serious violent crime.

The difficulty of course is as soon as we accept those principles, then we have to figure out what to do with

them and how to implement them. Part of our starting point, and I think part of the purpose of the committee considering the issue which is before it today, is that obviously all people who are convicted of criminal offences don't have to be sent to prison, or if sent to prison don't have to be spending their full sentences within prison.

In thinking about this issue, in thinking about what to do with offenders who are under provincial control, I think we have to keep in mind the fact that all of these people are obviously being sentenced to less than two years, those who are going into prison. Many are not sentenced to imprisonment at all, and to a very large extent they're there in prison for not very serious offences.

Remember that the most serious offence in 1994-95 for close to three quarters of these people was not something which involved violence. We're talking about people who have committed criminal offences, but we're not talking about serious violent offences.

The other thing to remember, and I think it's important in the context of these issues, is that the sentences they're getting are relatively short; the median sentence, the average sentence, is about a little over a month. So people who are going into provincial custody are not going to be there for very long, and even those who are going into provincial custody for a long period of time are going to be released fairly soon back into the community. If one wants to look for a purpose of corrections, one of the things one might want to consider is that a very important part of the correctional system is re-integrating offenders back into the community.

In some sense in the provincial system, that's probably more important in the long run than the issue of holding people, because of course if you think about it, with the parole laws as they are, the longest time a person is normally going to be serving in a provincial institution is 16 months. Typically they'll be serving much less than that, because as I've already pointed out, the average sentence they're going to be getting is only slightly more than a month.

The issue we're facing is how to use resources effectively, largely to ensure that people are reintegrated into society in a sensible way. I think what we should be doing when we're looking at halfway houses or looking at electronic monitoring is to be looking at the question of where these tools, these methods of reintegration, fit in an overall strategy within the criminal justice system, within corrections.

Ms Dianne Martin: This is my spot to step in.

The next point we make is that after agreeing that we want accountability for people who have committed

crimes so that if they've committed a crime there's an effective response, in the context that this is provincially supervised people—so we're not looking at the penitentiary crowd; we're looking at folks who get very short sentences—we also have to use the resources we've got wisely. It's now a cliché to remind legislators and the public that imprisonment is costly, but it's important to keep that front and centre, as I suspect the minister did.

It's \$125 a day to keep an individual in a provincial institution, and that's a low cost. It doesn't include capital costs, it doesn't include capital improvements, and it doesn't include the loss of a job, nor does it include the increase in social assistance costs the community has to bear. So we're taking the figure of \$125 a day and asking ourselves how we use that dollar in a way that holds offenders accountable and improves public safety. This is the point where we perhaps depart somewhat from the recommendation, or what's already occurred, shut halfway houses and put all those dollars—and enjoy the savings—into electronic monitoring. We part company there primarily because not everybody in a halfway house is going to be suited to electronic monitoring and not everyone that we might like to put a bracelet on needs the extra supervision a halfway house might have provided. By and large, these are two different categories of offenders, and we may not ultimately be saving any money and we might not ultimately be keeping the community more safe if we fail to recognize that they're a different population.

1540

Just to illustrate how that might work, the halfway house population has I think been overinclusive. I suspect there are folks in halfway houses who didn't need that assistance and could do very nicely in their own homes with a bracelet or perhaps with nothing more than an order to report. That doesn't mean there isn't a significant number of provincially supervised offenders who aren't indeed greatly in need of supervision, and a population that I am concerned about and would ask you to remember are those who are mentally ill. I'm a member of a review board. I meet these folks quite often. They're in and out of the mental health system, and they're in and out of the prison system, and they are fragile and they can be dangerous. They do not have homes or stable residences, they do need assistance in locating such residences, and it doesn't make any sense to leave them out in the community without that assistance. They may be serving a sentence of three or four months, but in that three or four months they could either get settled down into an address or they could get into more trouble.

A different population might be well suited to electronic monitoring if we wanted to use it in a denunciatory way. People who have homes, who have jobs, who have families and who have committed crimes are an interesting problem for the criminal justice system. We don't want to cost them their job unless it's unavoidable, because that costs all of us and it hurts an innocent family. By the same token, if we say, "We'll do nothing to you because you have a job and a family and a stable home," we're not holding people accountable for their crimes. That population, which is not all the folks that are suitable for halfway houses, might very well be suited to

electronic monitoring simply as a form of denunciation. It's not even somebody who we need to spend a lot of money supervising, nor do we need to spend a lot of money housing them, but we do, as a community, want to make a statement about their crime—the bracelet is a statement—and that population could very well serve their time, bear the stigma of the bracelet and not cost the system anything at all.

That said, we are concerned that this legislation or this regulation and decision might throw the baby out with the bathwater, and those offenders who are very much in need of supervision and can get into some very nasty trouble are being ignored. Again, as an example, the individual who is mentally ill, not to the point of not being responsible for their crime but indeed to the point of being not very able to take care of themselves, could get into a lot of grief, and an electronic bracelet around their ankle isn't going to keep them out of trouble. They're the population that a well-put-together halfway house system could very well serve and perhaps should serve.

That takes us I guess to the final point we wanted to make, which is that this kind of decision works best and most effectively if it's a piece of an overall strategy. One aspect of the minister's statements on the subject that we certainly agree with is the statement that part of the effort to refocus the justice system is to refocus it on serious crime. Tony put that into another context. We take that to mean that this is an opportunity to develop an overall strategy and what the province of Ontario wants to do about the offenders that fall within our jurisdiction, which are of course the least serious offenders.

Dr Doob: What we were suggesting is that this is really one part of it. It's obviously the end part of it, the correctional part of the system. But really the way perhaps to think about it would be to start with the issue of what kinds of charges should be brought to court, what kinds of recommendations the crown should be making in court on sentencing. And really thinking in terms of the crown's responsibility we would suggest would be to think in terms of the total use of resources and to think of how we can accomplish the best we can possibly do with the resources that are available. At the same time, obviously in terms of the principle which we enunciated in the beginning, the crown, in the sense of the government's responsibility, is to consider carefully what kinds of intermediate punishments between doing in effect nothing and putting a person in prison should be made available to the court and what kinds of guidelines might be available for the crown in making those recommendations.

In some sense, what brought us here obviously is the next stage, which is, when people are given sentences of imprisonment, how they might be modified, again so that we can get the most effective reintegration for all of us that we possibly can accomplish, and when one talks about issues specifically like electronic monitoring or halfway houses, what kinds of special groups of people, what kinds of special groups of offenders, are most appropriate for those.

As Dianne said in her comments, the problem we see is really the view that different kinds of intermediate

punishments or different ways of dealing with people who are in prison are in some sense interchangeable. Rather than seeing them as interchangeable such that one can easily be substituted for the other, we would suggest that they really are all different means of accomplishing something that we can all agree on, and the question is how one would do that most effectively.

When we were reviewing various things for our presentation today, one of the bits of information that I think stuck with us is that we're spending about a third of a billion dollars in this province locking up people, 70% of whom are not violent offenders. It seemed to us that we should at least see that as a challenge, a challenge on how we would best use that \$345 million to accomplish the goals that we can think about, and in that sense we shouldn't close off possibilities; we should be opening up possibilities to see how best we should do that.

We'd be very happy to answer any questions the committee might have.

The Chair: Thank you very much. I guess we'll start with Mr Ramsay.

Mr David Ramsay (Timiskaming): Thank you very much for coming to our committee. We really appreciate having the expertise that you bring to us this afternoon.

Ms Martin, you gave us an example of a type of client you feel might not be the right client for electronic monitoring, and specifically you mentioned those people suffering mental illness. With the approach that this government is taking now by eliminating the halfway houses, what do you see happening to an offender who suffers from mental illness upon their discharge from an institution?

1550

Ms Martin: What happens now and what might happen more in the future is that those individuals end up on the street, often disoriented and sometimes either the target themselves of criminal activity or they become engaged in it again. They are both victims and victimizers often because they can be annoying, they can be troubling, they can even be frightening, and so are often themselves victims of crime, which is a problem, or they end up breaking another window or repeating the cycle.

Mental hospitals are no longer the resource place for such folks, because their aim is to get people out into the community. What we're really doing is giving to the police another almost insoluble problem. They get faced with having to rearrest someone of this sort because no one else will deal with them. That's a revolving door that I think is really very troubling.

This one isn't easy to solve—I'm not suggesting it's easy to solve—but we might be making it worse with this step if there aren't any intermediate resources for those folks in particular.

Mr Ramsay: Is there another sort of class of offender that you would see would benefit from a CRC program?

Ms Martin: Oh, yes. The other group that troubles me and needs assistance with housing and with employment is the youthful offender: no longer a young offender under the Young Offenders Act, but an 18- or 19-year-old who is certainly not set in a criminal path but doesn't have a family, for example, doesn't have employment and doesn't have a fixed address.

You can almost see the path branching. Either that young person is going to become committed to more criminal activity or they turn around at this point. Given that they don't have resources of their own—which doesn't mean that all young people in prison don't have resources; I don't mean that. I mean that of the young people who don't have stable families, they're very vulnerable, and three months in jail is to denounce the conduct. What happens after that three months is what matters and where we can really make a difference or lose them.

Mr Ramsay: I think these examples are very important and it's one of the reasons I wanted to bring this to the attention of the government members. While I don't think anybody in the Legislature is really against electronic monitoring—I certainly see, as I think most of my colleagues do, there's a place for it in the correctional system—the problem that many of us are having is with the decision the government made as a total replacement to CRCs and not as one additional community correction tool. I think that's the problem, and you've illustrated that very well here today. I want to emphasize that point. I think it's very, very important that it's a new, modern tool and it should be embraced, but not exclusively to the detriment of the community resource centres we have developed.

Ms Martin: It may be, and I suspect it is, that community resource centres were too full of folks who didn't need to be there. Taking a look at the clientele who was there and saying, "Hey, a goodly number of these folks should be looked after differently," is a logical thing to do, but I think what Tony and I were concerned about is, as I said, tossing the baby out with the bathwater.

Mr Ramsay: Mr Chairman, how many minutes do I have?

The Chair: I'd say you've got one more minute. We have five minutes for each caucus.

Mr Ramsay: The other point you both have made that I think needs to be repeated too is that unfortunately in this jurisdiction we tend to incarcerate far more people than we need to. It's always been my contention that it's the violent people who should be incarcerated, and the non-violent people we need to find other sanctions for. Even though I have a jail in my riding and I think it's under threat, we really have to take a look at the old jail system and make sure we only have the facilities in the province that we require for incarceration and look at all these other both tried-and-true and modern methods of community corrections supervision so that we basically have a variety of programs in place.

The other comment I want to make on what you said about the youth is that it's very important too that some people like the youth need that constant supervision. Where the ministry is saying to us that there are going to be community programs that some people can avail themselves of, you've mentioned a clientele such as youth where just going for two hours maybe three times a week down to the community centre for a job readiness program isn't going to be enough. They need some constant supervision that they would have received in a CRC.

Dr Doob: I'd agree with you. The difficulty is that we have a system which really makes it very easy to put

people in prison, and everything else becomes very difficult. The judge can always put somebody in prison, because everybody's eligible for prison, but a certain number of people are eligible for electronic monitoring, a certain number of people, if we had them, would be eligible for halfway houses, for community service orders, for fines, for almost any other sanction. It's almost as if everything kind of drifts towards imprisonment and then we're surprised and upset that we're spending two thirds of our money in the provincial system incarcerating people who aren't really a serious risk to us.

I think that's why we need to address it at a broader level, not just in terms of the other kinds of punishments which are available but also in terms of what we're trying to accomplish overall in the system. It's really this lack of an overall system in which the punishment part shows up very clearly. In the end we end up in the adult system with large numbers of people who we look at and say they don't need to be there. As you know, we do that in the youth system as well.

Mrs Marion Boyd (London Centre): Thank you very much for coming. On the comment about people who might be eligible for CRCs, there's another group that you didn't mention. Those are a group that have great concern from the prison chaplains, and that's the developmentally delayed.

When we read the paper, we frequently hear that many folks who do commit the kinds of crimes for which they'd be sentenced to provincial jails may not understand the consequences of their act to the same extent that others would, and very often they're the ones who are helped particularly in these institutions, I would think.

Ms Martin: I agree. It's a really substantial proportion of those committing minor property offences, for example.

Mrs Boyd: One of the issues we've talked a little bit about with the other jurisdictions that we've dealt with is this whole issue you raise about sentencing. Certainly, having worked with provincial judges, one of the things that upsets them quite frequently is that they have little control over the decisions that are made about the type of incarceration that occurs. You're suggesting that it probably would be important for a judge to be able to order this type of temporary absence. Very often they may order it, but they certainly tell me frequently or have told me frequently that their order means nothing because once they're in corrections' care, corrections makes that decision.

We heard yesterday from the gentleman who was talking from Florida that in fact that program, although it was not intended for violent offenders, has expanded to include violent offenders, the community control program, because of plea bargain arrangements and because of the orders of judges.

I guess all of that arouses great apprehension, both sides of this, about whether we want judges to be able to make that decision, and on what basis there would have to be a pre-sentence report that did the risk management scheme that the ministry is proposing and so on.

I just wondered if we could have some comments from you on that.

Dr Doob: I was recently in British Columbia speaking to the judges there, and one of the people on the same panel as me was a person from the Ministry of the Attorney General in British Columbia who is responsible for their electronic monitoring program.

The committee might be interested in getting some of the information they have, but my understanding was that in most instances their people on electronic monitoring were all being released on temporary absence passes. But the mechanism for that was the person being sent to prison for a certain period of time—I don't remember exactly what the range was—but the judge saying in the order that he recommends the offender for electronic monitoring. Prior to doing that, there seemed to be an understanding and a cooperation between the probation service and the judges that they had done the screening so it was understood that this was somebody who was appropriate for it, that there was equipment available, that the home was appropriate and so on. The work had been done as part of the pre-sentence report. A focused pre-sentence report which would allow that would presumably be effective from everybody's perspective.

I think it can be done. The difficulty obviously to some extent is a jurisdictional one such that the province can't really create this as a new disposition, but certainly there would be nothing which would go against judges being allowed to make these recommendations or encouraged to make these recommendations with the advice of the probation officer.

1600

Mrs Boyd: It seems to me that with Bill C-41 coming in with the conditional sentence issue clearly having to be put in front of judges and their having to deal with how they are going to sentence, given the conditional sentence, combining this whole matter of eligibility for electronic monitoring and on what basis and that sort of thing would make sense at the same time.

Dr Doob: My impression from some of the discussions I've had with the judges in jurisdictions that do a lot of electronic monitoring is that it was interesting that they saw those as somewhat different. It may well be that because they were so used to electronic monitoring they saw this as an additional process.

But I think you're right, that what's happening under Bill C-41 is that the number of options is opening up. Really what I would strongly urge the committee to think about would be the possibility of using C-41 as yet another opportunity to look at how these correctional resources are being used and to try to use them effectively. Each time the federal government changes the law, we tend to see that as a new challenge to deal with in one way or another, but one approach to it would be to say, "Let's use Bill C-41." There are some changes in it which can be used because people should be seeing this as a new system of sentencing with some new principles written in.

Mr Ron Johnson (Brantford): I want to thank both of you for your presentation. I'm somewhat encouraged to hear you say that of course we have to look at ways we can best use our resources within corrections. I want to ask you one question about other sorts of things that are being used and are being looked at, because it seems to me that as a government we're far better off to make

a better use of our resources, get out of the bricks and mortar business and get into programs which provide the core services we require. I look at electronic monitoring as one of those. I look at diversion programs as a possibility. I look at things like the CRAs, community residential agreements, which, as you know, provide specialty needs, for example, for drug and alcohol treatment facilities, young offenders, young female offenders, that sort of thing. I want to get your feedback on those particular types of programs and whether or not those would fill the void that you seem to believe we would be creating if we strictly went to that type of program and got out of the traditional form of corrections.

Ms Martin: We could both probably talk about that. I think this is an opportunity. It was a startling move. It may have caused some individual harm—I suspect it has, and that part troubles me—to individual offenders, but it is an opportunity. Certainly the greatest possible saving to corrections is to shut a prison down, is to say that institution costs a fortune, is not keeping us safe, is keeping folks for a month and six weeks at a time. We know very well that isn't doing anything except disrupting some lives and producing perhaps the need for more bricks and mortar.

This opportunity is therefore one to look at those options, because I think those are good ones, and even others. There are jurisdictions in the world—New Zealand is one, Australia another—that are doing a great deal of work with victim-offender reconciliation. The police run these programs. They're engaged in the program and committed to it. If it's your program, you're committed to it. There are many creative ways a community can find to reconcile the offender and his victim. That doesn't have to cost any of us very much money and can make those people who are victims of crime feel very much better and also do something about the offender.

I would strongly urge taking this opportunity to think about shutting some prisons and think about doing it in a way that makes use of a broad strategy of correctional options. The ones you've named are very good ones, and I'd add more. Around the world, there are some tremendously creative responses and solutions to crime. We don't need to be narrow and provincial about how we respond.

Mr Ron Johnson: Exactly. I'm encouraged to hear you say that, because we as a government look at this as an opportunity as well to explore all the different options that governments of the past have completely shut out and decided to ignore. We're committed to exploring all of the options, and those are some of the ones I mention. I know there are others that are being looked at. I thank you for your input.

The Chair: Professor Doob and Professor Martin, we appreciate your assistance today. Thank you very much.

PROBATION OFFICERS ASSOCIATION OF ONTARIO

The Chair: The Probation Officers Association of Ontario, Ms Lori Santamaria. Welcome to the justice committee. We have a written brief and we have one half-hour which will include all questions. I'd ask that you proceed with your presentation.

Ms Lori Santamaria: First of all, thank you very much for providing the Probation Officers Association of Ontario with the opportunity to address the standing committee on administration of justice. My name is Lori Santamaria. I'm a director on the provincial executive of the Probation Officers Association of Ontario. My portfolio is that of the director of protocol, which means that my primary responsibility is to focus on policy. I'm employed by the Ministry of the Solicitor General and Correctional Services. I'm a probation and parole officer and my expertise is in the area of parole.

First of all, I would like to provide a brief overview of the association. We were established in 1954. Our members consist of probation and parole officers who are employed by the Ministry of the Solicitor General and Correctional Services as well as the Ministry of Community and Social Services. We have associate members from different parts of the criminal justice system who also are interested parties. Our focus is on the professionalism of probation and parole, primarily on policy and issues that impact on our membership.

In respect to providing the committee with a written submission, I have provided an agenda. Given the time frame of this meeting, a policy paper could not be completed. However, POAO believes in and supports community-based corrections where supervision and reintegration are the focus.

In January 1996, POAO requested written information on the electronic monitoring program and further requested to be included in the review process. The Ministry of the Solicitor General and Correctional Services will be completing a comprehensive review of the electronic monitoring program in the future, and POAO's interest in participating in that process is to be considered.

The first area I'd like to discuss is the implementation of the electronic monitoring program in Ontario. This program did not have a lot of time to be implemented. As a result, some say the electronic monitoring program was not well-thought-out. This program is not new in Ontario. It had been studied and reviewed through pilot projects in the 1980s and it was deemed not to be an appropriate alternative to incarceration at that time.

The second area I'm going to touch on is policy and purpose. The electronic monitoring program was introduced as a program to enhance reintegration by replacing community resource centres. This is not entirely true, as programming is no longer the focus. The electronic monitoring program does not include the community and in fact isolates the offenders. The short-term savings are not considered to be a benefit, given that the electronic monitoring program does not address reducing risk factors that lead to reoffending.

The criteria are the next area. The criteria for being accepted into the electronic monitoring program have received the most criticism. The mission statement of the electronic monitoring program is to "select inmates who meet the criteria for the ECTAP"—that's the extended custody temporary absence program—"but are deemed to require an added level of monitoring and structure to qualify for conditional release"; in other words, focus on diverting those offenders out of custody where appropriate. However, what is happening is that electronic

monitoring participants who are being selected are the same offenders who would have been eligible for the temporary absence program; the extended custody temporary absence program, ECTAP; as well as the alternative custody program. In fact, the electronic monitoring participants are often released on temporary absence after being on electronic monitoring. The savings, therefore, are questioned. What are the setup costs for that?

1610

Also, the same offenders who previously would have been released on the temporary absence program now have to meet even stricter criteria. The criteria are based on the offence. There are no level 1 offences—I'm sure you're familiar with level 1 offences—that are current level 1 offences or in the past five years; they have to have a low LSI-OR score—that's a level of supervision inventory-(Ontario revision), a tool we use—they have to have a minimum 180-day sentence; they have to have a home to go to and a telephone. These criteria are very restrictive if you look at the type of people we serve.

Community support does not play as large a role in the selection process if you compare it to parole per se. The question everybody is asking is, what is the cost to implement and maintain a program for so few offenders?

Finally, electronic monitoring programs are institutionally based and there is a perception that bias can play a role as superintendents have influence or discretion in respect to participation in the program. Some people criticize, saying that bed counts therefore can generate more or less participation in the program.

Supervision is the next area. This is an area of concern for the Probation Officers Association of Ontario. The POAO and the employers of the probation officers and probation and parole officers in this province, the Ministry of the Solicitor General and Correctional Services and the Ministry of Community and Social Services, all define supervision to include monitoring enforcement, but supervision also means establishing a supervision plan which requires objectives and measurable goals. This is achieved through programming and/or referrals.

Access to programming and community referrals is dwindling. Therefore, probation officers and probation and parole officers are increasingly expected to be engaged in the supervision plan. Probation officers are degreed professionals whose area of expertise is supervision, yet electronic monitoring officers are deemed the case supervisors. As case supervisors, they do not require degrees and do not receive the training probation officers receive, yet they are directed to provide supervision. It has been suggested that electronic monitoring officers provide surveillance and not supervision, again especially as programming is not part of the electronic monitoring program.

Looking at electronic monitoring versus CRCs, community resource centres, the electronic monitoring program does not provide for unemployed candidates returning to the community on supervised job search, which CRCs would allow them to do. Given the current economy, this is an issue. It is an issue because unemployment is a factor in offending behaviour. Economically driven criminogenic behaviours need to be altered

through acquiring work or skills. The electronic monitoring program encourages homelessness, in that CRCs could assist those without homes to be placed within the community prior to their release and assist in developing skills such as accessing resources before they are actually released into the community.

Integration of familial relationships that were affected and perhaps damaged through criminal behaviour would normally have been assisted through the support staff of the community resource centres and the referrals would benefit in the community. This is true especially for domestic violence cases. Slow integration and supervised programming were components of community resource centres. This is no longer available.

CRCs also assisted with self-sufficiency, providing life skills training and management of crises before things became problematic. Community resource centres and their staff were also able to provide early identification of adjustment difficulties, early detection of relapse into alcohol and drug use, early detection of return to criminogenic behaviour and relapse prevention training. The population served by the electronic monitoring program is so restrictive that these individuals may not require the assistance I previously noted, but such a stable population of offenders have a lower risk of reoffending in the first place.

The population that was served by CRCs now has little opportunity for a release program that can assist in addressing lowering risk factors, which is what we're all about. This is where costs are saved because the chances of return to custody are reduced.

The community and victims' feelings are not considered so much in this program. Victims know it is difficult enough to get satisfactory jail sentences, let alone having the offender go home on electronic monitoring. Community resource centres also provide a public education for communities where NIMBY syndrome was in existence—not in my backyard—and they were able to overcome that syndrome. The federal government has found that halfway houses are effective and valuable. It is my experience that CRCs were also effective and valuable.

Electronic monitoring versus parole is the next area we're moving into. An objective of the electronic monitoring program is to provide an alternative to other costly forms of supervision. Without having any figures available, it's assumed that parole is more cost-efficient and serves a larger population. It appears that parole and the electronic monitoring program are in competition and we're not sure why. Supervision with parole is better as there is face-to-face contact with the supervisor and the conditions of release assist with reintegration, as does the programming. Electronic monitoring participants are credited for good time while they're at home, yet parolees are not allowed this privilege. The optics are not as good as electronic monitoring because it's a better deal for inmates, and I'm not sure the community likes that type of optic. The criteria for applying for parole includes collecting information and data that go beyond the requirement of that electronic monitoring, and there is no community input such as police and community board members.

In conclusion, it is premature to discredit the electronic monitoring program as the numbers are not yet available. It is understood that the cost of the electronic monitoring program are great, especially as the population that's served is small and that programming is not a component of electronic monitoring. Without programming, criminogenic behaviour is not altered and we need to think about what are the economics of continued imprisonment.

Finally, instead of looking into replacing alternative programs for custody, consideration should be given to having several options available. This is especially true given the introduction of Bill C-41, conditional release, which will be introduced in September 1996. Electronic monitoring has a population to serve, community resource centres had a population to serve, and parole has a population to serve. Alternatives to custody need to focus on matching offenders to the program best suited for them. Suitability means reducing risk factors and re-offending behaviour and thus preventing higher costs of future incarceration.

The Chair: Thank you very much. Could you just tell me the number of probation officers in your association?

Ms Santamaria: Today's count I'm not positive on. Generally, we're around 300, just around 300.

The Chair: Thank you very much. Each caucus has approximately six minutes and we'll start with the third party. Yes, Ms Boyd.

Mrs Boyd: I'm sorry. I thought you were starting with Mr Ramsay, as you have all along. I beg your pardon; I wasn't even paying attention.

The Chair: No, we're going to change.

Mrs Boyd: Thank you very much. You're all right? You get the last word this way, David.

Thank you for coming and for giving your perspective. I wanted to go back to this issue around supervision. Do I understand that your concern is that those who would be doing the supervision under electronic monitoring would not have the same level of training and expertise that probation and parole officers have?

Ms Santamaria: Yes. I guess our concern is not so much even that, but in that the way the word "supervision" is used. My understanding, from the directive of the way the program is set out, is that it looks more like surveillance. It's just that supervision is supposed to be including counselling and programming, and that's not available. That is our concern, yes.

Mrs Boyd: And is it your concern that not having that available resource, the community resource centre, that there are going to be—and I think your words were "numbers of people who would have to be maintained in jail" because they would never be eligible for electronic monitoring, because of either not having a home or not having any of the supports that are seen as being important to the electronic monitoring program?

Ms Santamaria: Yes, including a telephone. Maybe to everybody in this room a telephone is pretty much a standard thing, but it's not for most of our clients. The same people who are in jails become our clients on probation or parole, and phones are not that common.

1620

Mrs Boyd: No, simply because of the income that they have and the circumstances in which they find them-

selves. If some of the concerns that you're raising around the level of supervision and around the criteria that are applied could be resolved—has your association taken a position that is absolutely opposed under any circumstances to electronic monitoring, or are you saying that you're just really concerned about the way in which it's being introduced, the notion that it's being introduced as an alternative or as the only alternative to community resource centres? Can you clarify that for us?

Ms Santamaria: Yes, that's exactly true. No, we haven't taken a stance on being against electronic monitoring; that's not the case. There is a population that it can serve. Unfortunately, it's a smaller population than community resource centres can serve, and that is where our concern is. There are levels of offenders who respond very well to parole, who did respond very well to community resource centres, and there are, I'm sure, going to be lots of people who respond very well to electronic monitoring. It's just that as a replacement to community resource centres and as the only alternative, and appearing to be in competition with parole, that becomes a concern because they all have benefits.

Mrs Boyd: I'm not sure that you were here when I asked the question of Professor Doob and Professor Martin, but the risk assessment instrument that you mention, because you represent probation and parole officers you're used to the pre-sentence report routine. Do you use that instrument in terms of risk assessment for a pre-sentence report and do you think it is the kind of fail-safe that should be there in the system, that this be done before the sentencing process to ensure that risk assessment has been done and that the appropriate sentence is suggested by the crown?

Ms Santamaria: You want to know if the level of supervision inventory-OR should be used prior to a pre-sentence report?

Mrs Boyd: Yes.

Ms Santamaria: Yes, there's benefit to it. The association again—we support the LSI and the revisions to it. We were involved in that and we're happy with some of the revisions. It's more reflective. Some POs do do it as a matter of course, but it becomes almost second nature that those are the areas you identify anyway. Whether you actually sit down and score the form or not, it's second nature to know what areas you should be alerted to. So, yes, it is definitely a good tool. But the only problem with the way the new LSI-OR was introduced is that it's supposed to be a tool, and unfortunately the way the electronic monitoring program is written up, it says, "With a low score," and it doesn't allow for that discretion. Low scores do not always mean what they appear to mean. It's common knowledge that sex offenders generally score very low because all the other criminogenic behaviours are not the same; they have one specific area so their score stays low. So to be locked into a score is dangerous, but the new tool is to allow us to not be locked into that and looking at other offending behaviours.

Mrs Boyd: Although it's in the level 1 offences, so there is a bit of a fail-safe.

Ms Santamaria: Yes, that's right. Sex offenders wouldn't be eligible anyway.

Mr Ron Johnson: I want to thank you very much for your presentation. You indicated earlier in your presentation that you felt the criteria to release offenders on electronic monitoring were too restrictive. Can you just clarify that for me, please?

Ms Santamaria: Okay. I know it sounds a little contradictory. On one hand I'm saying it's too restrictive and yet saying that some people might not see electronic monitoring being a good thing, for people to go out to communities so quickly. It's just that it's restrictive in that—again, I don't have numbers or stats available, but knowing what I know from the years of experience and the people I supervise who have been in jail, the criteria are level 1 offences are not eligible, which makes common sense given that they're higher risk, but they also couldn't have had a level 1 offence in the last five years, I believe it says; they must have a minimum of 180 days' sentence, which is I believe a little bit longer than the average stay; they also have to have a telephone; they also have to have a home. And those criteria combined, not individually but combined, make the population that you're going to be able to serve much smaller. On their own they all have merit but, again, together it becomes more restrictive.

Mr Ron Johnson: It would seem to me, and I wouldn't mind hearing your position on this, that one of the reasons that it is restrictive is in the interests of public safety, in that obviously you don't want offenders on this type of program who could pose any sort of threat at all with respect to public safety and that's why I think it is this restrictive.

Give me your thoughts on that and give me your thoughts with respect to the type of individuals—if in fact they didn't meet that particular criteria, what parts of that could, in your opinion, be loosened up to allow possibly more people on to the electronic monitoring?

Ms Santamaria: Like I said, there is a population that would benefit from electronic monitoring, and yes, there has to be criteria because you don't want people just going in, being sentenced and walking out the next day. They need to be a low-risk offender. My point is that that's a small percentage of the people who are sentenced.

Our issue, I guess, is more the fact that there's a whole other lot who need to be served and could be served outside of a jail setting but they need somewhere to go. They just wouldn't necessarily be appropriate for electronic monitoring because they need programming, they need the assistance of making that slow transition back into the community. Where I'm saying "restrictive," it's because there are just not as many people who qualify. In all due respect, there should be definitely strict criteria for the program.

Mr Ron Johnson: I know that even as recently as a few moments ago, electronic monitoring was being touted as the only alternative to community resource centres. The concern I have with respect to that is, we are looking at—for example, in a diversion program, CRAs are obviously in use today, and this is the question I posed to the previous presenter, and will in fact all of this combined provide the necessary facilities with respect to taking care of offenders? Does that meet the needs that

you see out there, encompassing a lot of the people you say would be outside of the restrictions that we impose for electronic monitoring and could fall within one of the other programs? I guess that's the question I'd like you to address.

Ms Santamaria: Yes, they could be, but again, I'm not—you're saying CRAs in terms of—

Mr Ron Johnson: Specialized programming for alcohol abuse, young offenders, those sort of things.

Ms Santamaria: Those people generally are placed on probation to attend those type of programs or are already in diversion. Our position on this is that these are people who have been sentenced to jail and that's why they're not being served as well, because there's just not as much at that level.

In terms of anything in the community, in programming, the different alcohol-related, drinking-and-driving programs, that's usually a part of probation, but again, we're looking at trying to see if there's any way we can complement the system through having access to various programs and not just replacing one program with another, because they aren't equivalent. They're completely different and they meet different needs for different individuals.

Mr Ramsay: Thank you very much for coming this afternoon. I'd just like to comment, first of all, on what Mr Johnson just said. He was saying that people are implying that electronic monitoring is being touted as a replacement to the CRCs. The reason that is, is of course, they came together in the minister's announcement that he was closing 25 community resource centres throughout Ontario and was going to accelerate the use of electronic monitoring as a replacement. So it's the minister who has joined these two issues together and it's why we bring this to this committee, where we think electronic monitoring is fine in its application, if it's done properly, but so are community resource centres, and I know you've made that point.

One of the points that I wanted to emphasize that you had made, that I thought was really excellent and really brings home what electronic monitoring is, you said that basically, as we started out with our pilot, electronic monitoring is centred out of the institutions and they're not P&P officers who are supervising this but correction officers from the institutions. So really what we have here is another type of incarceration. In the States they call it house arrest, but that's what it is, and that's fine; I agree with doing some of that. But what's missing is a lot of the intensive supervision and the programming that would have been supplied by a CRC, and I think that's the point that you make that is very valid. You mentioned things like supervised job searches that are very important, programs for people who come out, just like my colleague said, who maybe don't even have a phone, let alone a job or a place to stay, and it's that transition time under supervision that gives the offender that chance to reintegrate into society and I think that's the point that the government members are missing and you've brought that forward.

I think my colleague might have some questions, so I'll go to her.

1630

Ms Annamarie Castrilli (Downsview): I was impressed by what you set out as four principal functions of CRCs; that is, early detection of difficulties, prevention, public education and behaviour altering. I think that's something that's very useful for us to have on the record. Those are things that of course electronic monitoring will not address at all.

I'm wondering if you could tell me what kind of clients typically you would find in a halfway house, how many—clients, I use generic words.

Ms Santamaria: That's what we call them.

Ms Castrilli: What the length of stay is, if you know that, and perhaps how often they reoffend while they're in CRCs, if they in fact do.

Ms Santamaria: In terms of the statistics, the length of stay and how often they reoffend, I don't have them available. My caseload that I deal with is mainly parolees and I also have a caseload that we call probation following incarceration. So anybody who wasn't eligible for parole because they may not have had a place to go, they would often go into a CRC and then come out on probation. With those people I worked with, they've done really well. In fact, they often will stay in contact with the staff at the community resource centre, to continue to go to meetings. I've had people go there and bring them lunch and what not. They develop a bond with those people and always know they're available. How long they stay for, like I said, I don't know. I just know that the ones I have had who have gone through have done really, really well and they wouldn't have done well otherwise and they would have been too high a risk for parole.

Just going back to the point about having a home available, that's one thing parole has never been able to address because it's impossible, unless of course you set up parole houses. You have to have a residence to go to if you want to apply for parole. So CRCs were able to catch that group, and again, it helps them find a place to live, and it's accessing resources, teaching people how to access resources. For some of us, it may be easy to pick up a book and go through and figure it out, but for a lot of people we work with, it's not. That's just the way it is. Part of our role as support in the community and part of the justice system is to teach that. That is something we need to do and we do that as probation and parole officers; but again, without having that link to the community, that's missing. Again, electronic monitoring is fine for the population that it's appropriate for, but then we have a whole band of people who are not being served.

The Chair: Thank you. Our time is up and we'll move on to the next person. I thank you for attending today.

ONTARIO ASSOCIATION OF COMMUNITY CORRECTIONAL RESIDENCES

The Chair: Ontario Association of Community Correctional Residences, Joan Winchell, president, and Arthur Stratton, member. Welcome to the justice committee. Our procedure is that we have one half-hour. Hopefully, that'll be taken up by your presentation and then each caucus has the opportunity to ask questions of clarification. Excuse me, just one moment. Did you have

a question of the staff that you wanted to clarify now or could that be done later?

Mrs Boyd: I think at the end of the testimony would be fine, Chair, thank you.

The Chair: If you would proceed, then.

Ms Joan Winchell: Good afternoon and thank you for providing us with the opportunity to appear before the standing committee on justice. I am Joan Winchell, the president of the association, and this is Arthur Stratton, a colleague of mine and a member of the association. The OACCR is a province-wide organization representing adult halfway houses and phase II open custody residences in Ontario.

The closure of Ontario's halfway houses in October last year was the culmination of several rumours which had been circulating over the summer. Despite repeated attempts by our association to consult with the ministry, both as an individual entity and as part of an Ontario coalition group, no acknowledgement was received to our repeated requests until after the closures were announced, actually in November.

Halfway houses in Ontario have existed over 20 years as a quasi-legislated service. I say "quasi" because although the actual service is not mandated, the policies for dealing with inmates or clients—your preference—including the handling of room-and-board dollars, for instance, are clearly stated within the legislation. There has always been the acknowledgement within the spirit of the law that community residential care of inmates played an important part in the Ontario justice system. The underutilization in the placement of low-risk, low-need offenders in halfway houses was an issue that our association had been focusing on for some time, particularly in the last two or three years.

Community services providers have repeatedly addressed these concerns with the ministry through participation in several study groups, the most recent one being the community residential services review, which took place from September 1991 to early 1993. This study focused on the utilization rates in halfway houses, client profiles, efficiencies and effectiveness of services, including the use of community knowledge and expertise, in the continuum of care. I am sorry to report that no change or progress has ever resulted from this study, not due to the lack of interest or commitment by the community groups involved, but the ministry had other priorities at the time. I offer these insights in order to reinforce the fact that community agencies in Ontario have long realized the need to stay vital and current in order to provide efficient and effective service.

The association hesitates to fully support electronic monitoring, although we firmly believe there is a portion of offenders that this particular alternative to incarceration will serve, but we feel very strongly that it can only work when other community-supported programs are in place. Several Canadian jurisdictions, including Saskatchewan, Newfoundland and British Columbia, report ongoing success of electronic monitoring when coupled with residential services, when required. Even Florida research, as you heard yesterday in the presentation, indicates a higher success rate when halfway houses are part of the continuum of care for offenders.

The Ontario revision of the LSI has resulted in criteria for release which will severely limit the number of eligible participants, as you've heard from the POAO its concerns, and it's also one of ours. While we recognize the necessity for this instrument and applaud its redevelopment, the association is also concerned that this instrument will result in a higher-than-normal failure rate, therefore increased reincarceration of offenders. That's increasing costs to the Ontario taxpayer.

Electronic monitoring may appear to be the least expensive alternative in the moment, but when the true costs, including supervision, the reincarceration of offenders who have breached conditions of electronic monitoring and the increase in the institutional population due to restrictive TAP policies, as well as electronic monitoring policies, are finally known, will the results reflect the present assumptions; that is, will this policy result in the planned savings of approximately \$7 million?

We fully embrace the fact that limited resources in Ontario are forcing a realignment of priorities. We acknowledge that the placement of low-risk, low-need offenders in halfway houses is not the most efficient use of resources. But I will add that public opinion, ministry policy and the perceived fear of crime have had a direct impact on risk management. That in turn has an impact on utilization rates in halfway houses.

One could argue for hours, but suffice to say that the closure of these houses has left a huge gap in the provision of service for offenders in Ontario. How can we effectively reduce recidivism without a full range of options, which North American research clearly indicates is necessary to be truly effective in crime prevention? We are encouraged to note that the community corrections strategy for Ontario is not fully developed at this time. This presents an opportunity for volunteer-based community agencies to be involved in the development of this strategy. We, the community experts, are eager and enthusiastic, and look forward to participating in planning for a more effective and efficient justice system in Ontario.

It is also encouraging to note that the ministry's consultative committee is to be reborn at the end of May. This will hopefully be the jumping-off point for further community involvement. Communities in Ontario have a responsibility and a right to be involved in crime prevention and the reduction of recidivism. Volunteers developed community corrections and we, as both volunteers and professionals, insist on remaining involved in order to make our communities safer places to live.

1640

The Vice-Chair (Mr Ron Johnson): Thank you very much. We'll move now to questions. Each caucus has about five or six minutes and we'll start with the Conservative caucus.

Mr Ed Doyle (Wentworth East): Thank you for coming today, I appreciate it. Yesterday's Florida brief—one of the figures they gave—it was a little hard to hear their presentation because of the phone line quality. Unless I got these figures wrong because of a bad line, I understand there are some 15,000 people on house arrest in Florida—I believe that was the figure he gave—and

only 1,000 of these people were on electronic monitoring. I'm wondering if you could give us your views on those types of figures and their implication.

Ms Winchell: Not being fully familiar, and not being the least bit familiar with their criteria for electronic monitoring, if it is more restrictive than Ontario's criteria or least restrictive, my immediate read on it would be that they probably are taking more advantage of their halfway house system that's already in place and using that as treatment and supervision for possibly what we would refer to as level 1 offenders.

Mr Doyle: Most of the witnesses have said, of course, that they believe there is room for electronic monitoring. I'm wondering if you could expand on that and give us your views on that and how you feel it can best be used.

Ms Winchell: The association certainly feels there is a place in the continuum of care for electronic monitoring in the province of Ontario. Our concern, and it was reiterated in questions prior to my speaking, was that electronic monitoring will never serve the same population that community resource centres served. It's just a different level of inmate; it's a different need; it's a different population altogether. For instance, in the federal system in Canada it's quite often used for high-risk, high-need offenders when they are released from halfway houses, as a continuing monitoring of their success in the community. I think our concern about it being used at the front end—I can see it if 50% of the sentences in Ontario are less than 30 days; why aren't we using it at that end? There's a whole segment of our population there that could be best served without being incarcerated at all. Perhaps that's where the application needs to be studied more than actually applying it and then at the end of a sentence or near the end of a sentence—the problem is that I'm in and out of institutions on a regular basis and the criteria are so restrictive that the number of people applying is very, very low.

Mr Doyle: Thank you very much.

Ms Winchell: You're very welcome.

Mr John L. Parker (York East): If I understand your submission fully, what you're saying is that electronic monitoring has its place but it doesn't do everything that a CRC does, and the CRC does certain good things that we shouldn't lose track of. Can you just describe briefly what those things are?

Ms Winchell: I'll start to answer you and then I'll pass this to Arthur because he actually was a director of a CRC so he's very familiar with the process. It probably provides, to reiterate what the POAO representative said, a structured environment that facilitates reintegration. We look at reintegration, and in order to be successful it has to be done on a gradual basis. CRCs are monitored in order to allow that gradual—

Mr Parker: I don't want to cut you off, but I just want to get some clarity. How gradual are we talking about? We're dealing here with people who are just incarcerated for a short period of time.

Ms Winchell: Yes. Normally what happens is that a person comes in and spends at least 48 hours within a residence, as a minimum, to establish sort of a pattern; to confirm their employment, to confirm their residence, all those kinds of things. An initial assessment is always

done within 48 hours to see what the needs of the offender are, where the supports need to be, whether it's counselling, whether it's in the community, whether it's in a house. It provides a very structured environment. They're assigned a case worker; the job search begins.

Mr Parker: Is there no way of performing that service other than through a CRC?

Ms Winchell: There are other ways of performing it. The problem is that a great number of the people who end up on parole or probation in CRCs do not have alternatives. They don't have housing, they don't have permanent jobs, which the parole board would see as criteria for release. Unless they're applying to come to a CRC, for instance, where they begin to establish that pattern in their community, they're not eligible for parole. That backs up into the system, so that forces up the rate of incarceration, and at \$140 a day, or \$120 a day on average, that's very expensive.

Mr Parker: What's the average length of stay in a CRC?

Mr Arthur Stratton: The average length of stay would be about six weeks. However, that doesn't mean the individual is serving a short sentence. At our facility here in Toronto the average length of sentence was about 180 days. We have to look at the provincial average but we also have to look at some of the hot spots in the province. Maybe we didn't need 25 CRCs in the province. Maybe we don't need 400 EM bracelets; maybe we only need 200. Maybe we didn't need 25 CRCs but maybe we do need five, 10 or 15, based upon how many individuals are currently in the system who need that level of attention, that level of care.

Mr Parker: Are there cases where the kind of service you're describing could be provided adequately outside a CRC?

Mr Stratton: Today, no, because of all the cuts that we've seen. Just to clarify, one of the purposes of the CRC is almost a bridging. We've seen a lot of division between community and social services, housing, health, corrections. They tended to work independently. The CRCs were able to link clients with the community, were able to bridge between the different ministries. As soon as they leave our door, leave the control of corrections, it doesn't mean all their problems have gone away. They're going to be on Comsoc's or health's or someone else's doorstep. We were trying to identify in CRCs where the needs were and whom we can link them up with; otherwise they're going to fall in the gaps.

Mr Ramsay: Joan, thank you very much for coming. We appreciate both of you making your presentation. We have people come before us and sometimes we sound like a broken record, but each different presentation gives us new insight as to the need for a place for CRCs. I thank you for admitting that the number 25 might not have been the right number. You're willing to admit that and say, "Let's look at what the system needs." What we're very concerned about is the arbitrary decision the minister made, "There shall not be any CRCs in Ontario," and bang, with the stroke of a pen even broke into some contracts to eliminate them.

On this point of supervision, for some people coming right out of jail, being under house arrest at home, even

though they maybe have to go for a couple of hours a few times a week to some program in the community, doesn't really give them the intensive supervision that might be required in that circumstance, whereas for a lot of people, possibly electronic monitoring suits them very well. I think the case needs to be made that not all the clients you serve and whom the system serves are the same. They deserve different approaches.

One question I have for you is your difficulty in accepting the ministry's cost of about \$5 a day, \$4 a day, for this. You cite examples of Newfoundland and British Columbia, I think it was, of \$50 and \$45. What accounts for the difference in the cost of those systems and what Ontario is saying it can do it for? Why are they saying it's going to be so cheap here?

Ms Winchell: In the preparation of the brief, the difference was that the \$5 accounted for equipment only. It doesn't at this time account for supervision or feeding into community programming or any costs associated with that. With the fee-for-service structure now taking place in Ontario, it's going to become more of an issue, I think.

1650

Mr Ramsay: Okay, and that's because they've just got this built-in cost to the institution because one of the COs at the institution, on a rotating basis, will just sit down by the machine every so many hours a shift, I suppose, and make the calls or whatever, so that's not being budgeted into the program.

Ms Winchell: Right.

Ms Castrilli: I was impressed with the figures you present on page 2 and page 7. You indicate, as you have stated, that the average sentence for provincial offences is somewhere between 52 and 79 days, and yet the average sentence length in at least one halfway house is 173 days, six months, which sounds to me like these are more violent, more serious, riskier offenders than you would otherwise find in prison. These are the people we're now looking to monitor electronically. I wonder what your thoughts are about how effective this is going to be in terms of society's security overall and the eventual cost to society of just putting these people on electronic monitoring.

Mr Stratton: Security of society will occur for the length of the sentence, because the individuals who were in—I speak for my program here in the city—will not be eligible for electronic monitoring. During the last year, approximately 38% of the residents in my program were level 1 offences. As a result, they will not be eligible for electronic monitoring. Therefore, they will be serving their entire sentence in an institution at a cost: increased safety to the community only for the length of the sentence, then upon release you've got a more angry, frustrated, confused individual who has none of his needs or problems met. Now we lose the safety and we get into more danger to the community because of his release.

Ms Castrilli: You would also have a higher cost, wouldn't you, for the 173 days if this individual is kept in a facility as opposed to on electronic monitoring?

Mr Stratton: Virtually twice the cost, yes.

Ms Castrilli: Just one final question: You've done a great job of comparing some of the programs in various

jurisdictions, and I commend you for that. Are you aware of any jurisdiction that has eliminated CRCs altogether, and if so, have they done it effectively?

Ms Winchell: As far as I'm aware, Ontario is the only one.

Mrs Boyd: Thank you very much for coming to share your expertise with us. Yesterday Margaret Stanowski was here, and one of the issues that arose was the same one you raised, that there were people who might have been put in CRCs who were not appropriate for them. There was a little bit of misunderstanding about whether that meant they were a danger to the community or whether they were no danger to the community and should never have been incarcerated in the first place. Would you like to comment on that?

Ms Winchell: There is an increasing concern that there are more special needs within the correctional environment than there ever have been before. The closure of psychiatric beds across the province, with access to psychiatric services becoming very limited, particularly in the greater Toronto area and our multiculturalism, our English-as-a-second-language difficulties around job searches and those kinds of things, is making it more and more difficult. Although we're very pleased to see that there are 59 CRA beds left open in the province to serve those special needs, I don't think those numbers are adequate. It won't begin to answer the need we're going to have in an overcrowded situation.

Mrs Boyd: The estimate was close to 400 people who were removed abruptly from the CRCs, put back in prison—one wonders—or just let out on the street without warning, one's not quite sure. Those 400 beds suddenly added to the complement of overcrowded prisons is really quite a scary thought, particularly when we know we're not seeing lower numbers of sentence. We're seeing a public demand which obviously, over time, impacts on the whole criminal justice system around probably longer sentences than might have been true otherwise.

The real issue in terms of public safety, one of the issues that obviously needs to be addressed, is that we are not necessarily better served by longer sentences. What we need to do is sort out for whom longer sentences are required and for whom they're not. It seems to me that at the provincial level, for the vast majority of people the whole issue of incarceration as opposed to some form of community corrections, from residences right down to electronic monitoring to community service, may be more appropriate, and that really is the challenge.

The auditor's report, for example—I think some of you responded to that—around the issue of parole is a similar kind of thing. If we're telling the parole board quite clearly that we don't want people paroled, then what are we going to do with them, and how are we going to do that transition to the community without the resources that were there? The auditor was basing his report on having those resources there, not on not having them. Would you like to comment on that end of it?

Ms Winchell: Several years ago there was a large study undertaken by the government and by what was the Ministry of Corrections at that time which had to do with the justice review project. I'm sure you're familiar with it, Marion. Part of that study was to look at the concen-

tration of limited resources within the environment, the combination of all justice administration and justice ministries across the province. It looked at young offenders, it looked at adults and it looked at special-needs cases. The study has never been released to the public. The last I heard it had gotten stalled somewhere along the system. There is serious concern by the volunteers who sit on my board of directors and by the thousands of volunteers who sit on boards of directors across the province about how we're going to handle the influx of the numbers on the criminal justice system.

We're concerned about overcrowding within institutions. We all know that. We've had a very current example in Manitoba over the weekend about what happens in overcrowded conditions. We're very concerned because with the abrupt closure of CRCs, boards of directors have disbanded and licensing of group homes has been allowed to lapse, so we will no longer be able, in some jurisdictions, to resurrect those houses. They are gone forever, and I think in Ontario we have to be more creative and more innovative and look to alternatives to incarceration.

There is a large population—80% of the people under the mandated corrections are non-violent—so we have to look at ways in which we can deal with these people more effectively. The only way we're going to be able to achieve those goals and assist the government, as community agencies, in streamlining the cost of corrections is to seriously look at that 80% of the budget of corrections that goes into institutions and transferring some of those dollars out into the community so that we can really begin to be innovative and plan for ways to disincarcerate the members of our criminal population who don't need to be there.

The Vice-Chair: We are going to have to stop there. Thank you very much. On behalf of the justice committee, I thank both of you for appearing in front of us today.

Mrs Boyd, just before we move on to the next presenter, you indicated you may have a question for staff clarification. Go ahead.

Mrs Boyd: It's fine at the end of the day when all the presenters have presented. They are our visitors and we should probably accommodate them first.

The Vice-Chair: Sure. Excellent.

1700

JOHN HOWARD SOCIETY OF ONTARIO

The Vice-Chair: Next is the John Howard Society of Ontario. Mr Graham Stewart, welcome. You have 30 minutes for your presentation. Within that, you can leave some time for questions, if you like. You can begin.

Mr Graham Stewart: I'd just like to begin by thanking you for rearranging the schedule to accommodate me this afternoon. I apologize for any inconvenience. At the same time, I appreciate the opportunity to hear the other witnesses. I find this a fascinating field that's always open to new insights.

My name is Graham Stewart. I'm the executive director of the John Howard Society of Ontario. The John Howard Society has 17 branches throughout Ontario, mostly in the larger centres, providing a range of services

from school education programs through to after-care services for offenders being released after very long sentences in penitentiaries.

The John Howard Society was founded in 1929 by General Draper, who was then the chief of police of the city of Toronto. He viewed the lack of support and opportunity for those released from prison as factors which undermined the efforts of police and other justice officials to address crime. He was very concerned that those who leave prison not be destitute, frightened or view the community as being hostile to them. His observations are as valid today as they were in 1929. General Draper was not a soft-hearted apologist for crime or criminals. He was rational. Punishment and law enforcement, however, were futile without rehabilitation. He also felt that that rehabilitation was most effective in the community.

The basic maxim of those who work in the field of corrections is that you can't counsel a hungry man. Basic survival needs of food and shelter must be addressed before criminogenic, cognitive and emotional factors can be influenced. A person must have a place to stay that is safe, clean and warm. He must have reasonably nutritious food. The environment must be reasonably pro-social. He must have opportunities to succeed and he must be able to see those opportunities. He must have help when he is tempted to drink or take drugs if he has an addiction problem, and he must be encouraged if he feels depressed or angry. Desperation leads to desperate decisions.

Today the literature on recidivism confirms General Draper's instincts. The literature describes risks and needs. Risks of reoffending are responded to with measures of external control. Needs are responded to with programs that train, treat and educate. The fewer the needs, the better the person is able to exercise personal control and responsibility and therefore the less the need for the external controls. When a person's not motivated to commit a crime, we do not have to spend time and money watching him.

The elimination of community support for services such as halfway houses, employment programs, welfare, along with the expansion of imprisonment and measures of control, such as electronic monitoring, take us back decades in Ontario's social policy. The risk/need balance is gone.

To many people leaving prison today, they face desperate, depressing and hostile circumstances. Under these circumstances, the prospect of serious long-term behaviour change becomes remote.

Each year in Ontario about 40,000 individuals are released from imprisonment. Having short-term accommodation, support and treatment for 400 at any given time was not excessive.

I'm not making this statement as an organization that was operating provincial halfway houses. We do not operate provincial halfway houses and we're not affected directly with their closures.

We also support the recommendations of the Coalition of Community Organizations. Not every offender needs a halfway house, and often these facilities have been used for those who did not require them. The same could be said of hospitals. Too many of those who were sent to

halfway houses were such low risk and had such low needs that the house wasn't much more than an irritation. At the same time, far too many that desperately needed the help of such a facility were never given access to them.

Alternatives to halfway houses to assist with gradual release, such as work programs, were used infrequently and when used were never evaluated. There was a great need and opportunity to rationalize gradual release and community integration services, along with supervision and treatment. We are not advocating the status quo.

Closing halfway houses was astonishingly short-sighted. It may also be largely irreversible if allowed to continue too long. Community resistance to opening new houses will make it extremely difficult to find new sites. Years of experience and training of the staff needed to operate these facilities will be lost. The necessary trust between the government and community agencies typically depended on to operate such facilities will also be lost. Halfway houses are no more subsidized housing than the imprisonment that replaces them.

This submission relates primarily to the consideration of electronic monitoring as an alternative to the use of halfway houses and other correctional programming. It is intended to supplement the submission from the Coalition of Community Organizations to which we were signatories and which you have already received, I understand.

We do not support adopting electronic monitoring as part of the correctional strategy for Ontario. I want to elaborate on our reasons and propose alternatives. Attached to our brief is a fact sheet on electronic monitoring which we prepared, intended to put forward basic information that would better inform the public debate.

While electronic monitoring is being presented as an alternative to incarceration, we believe in the longer term that it will be used substantially as an addition to probation, temporary absence and parole. Electronic monitoring seems to appeal to both those who think rehabilitation should be the primary focus of our correctional strategy, as well as those who think correction should emphasize deterrence as the primary focus. Those on the rehabilitation side support the use of electronic monitoring because it appears to be less harsh and therefore less destructive than jail; those on the deterrence side see it as a way to make community supervision more restrictive and punitive.

It is not likely, however, that the same program will be used for both the reduction and the enhancement of punishment and social control. If it satisfies the rehabilitation advocates, it will be applied only to the more serious offenders who would otherwise be clearly prison-bound; if it satisfies the deterrence advocates, it will be applied only to low-risk offenders who might just as easily be released without the additional mechanism.

Electronic monitoring may be less expensive than jail, but it's certainly much more expensive when added to probation, temporary absence or parole. In the end, it seems quite likely that the net impact on the number of individuals incarcerated and the costs of corrections will be negligible, but we will have introduced a new costly level and mechanism of detention which will be difficult to control.

Virtually every advocate of electronic monitoring has a specific type of offender in mind that he thinks is suitable for the program. The Ontario program will focus on those who are low risk and have committed offences that did not involve any violence. Others argue that electronic monitoring is appropriate for the most serious offenders and, in particular, federal parolees, lifers and those released on statutory release. Electronic monitoring may be a feature in the proposed legislation to provide extended supervision for a new category of dangerous federal offenders. It's worth reflecting that in Newfoundland the electronic monitoring program is designed to address those who are seen as moderate risks, Saskatchewan sees it as an addition to probation and as a sentencing option, while in British Columbia it's focusing on those who are seen as low-risk incarcerates.

The problem for the John Howard Society is that if this form of community supervision can be justified with the least serious and it can also be justified for the most serious offenders, then surely there is no reason why it should not be applied to the great majority of offenders who fall into the middle. Once in place, surely it will be a virtually irresistible temptation of politicians to use the expansion of electronic monitoring as a way to respond to public fear and anger generated by the inevitable serious events and to demonstrate that government is doing something to address the need for enhanced public safety. It seems almost inevitable that electronic monitoring will eventually be added to existing community supervision at major additional costs to the existing community supervision programs operated by the Ministry of Correctional Services.

At the same time, research from other jurisdictions which use electronic monitoring shows that it unlikely that we would see a significant drop in prison costs which would be attributable to electronic monitoring. With respect to costs, it should be noted that substantial cost savings would only be achieved when the number of persons on electronic monitoring permits the closure of an institution or a portion of an institution. For example, it would take a reduction of 4,200 offenders on electronic monitoring each year for an average period of one month to close a 350-bed institution in Ontario. Even at this unlikely level of use, the program would reduce prison bed use by only 5% in Ontario. If distributed proportionately across the province, that would not allow for the closing of any institutions.

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Electronic monitoring will only save money if it's used with offenders who would otherwise be in jail. If it is used to increase the severity of probation and parole or temporary absences, or if judges use electronic monitoring as a rationale to send people to prison, then in fact it will be more costly. With that in mind, the obvious method by which a judge could do that is simply sentence a person to an intermittent sentence with a recommendation for temporary absence. I think within the construct of the current model as proposed, that's quite a substantial possibility.

In 1987, before the BC pilot project began, correctional officials estimated that five staff would be sufficient to manage 150 offenders on electronic monitors. Three years

later, the evaluation of the project deemed that it was necessary to increase that ratio by eight times.

The fact that Ontario's costs are estimated at \$17 a day—I heard others say \$5 a day—as opposed to British Columbia spending \$45 and Newfoundland \$50 I think reflects the fact that fairly typically when electronic monitoring is introduced into different jurisdictions, the costs of the program are underestimated.

The 1989 pilot study of electronic monitoring in Ontario found that when criteria excluded the violent and the impaired driver offenders from the project, the cost of the project could not be justified in terms of the small numbers of people who were released on electronic monitoring. Most importantly, the ministry acknowledged that many of those who were released could have been safely released on temporary absence or other forms of gradual release.

In British Columbia the program started with similar criteria, and by 1993, 30% of those on electronic monitoring were being classified as having committed offences against the persons, or serious, or sexual or violent.

The simple fact is that most appraisals of electronic monitoring are completed by those who are operating the program, and their own determination of success becomes the rationale for expanding the service.

In the state of Michigan, electronic monitoring was introduced to save halfway houses and the temporary absence program. Although individuals on furlough had a very high success rate, public pressure to toughen the system threatened discontinuation of the program. Today, virtually every inmate given early release in Michigan must undergo a period under electronic monitoring. This "successful" program appears to have expanded the supervision of those who would have been released in any event. If electronic monitoring saved the furlough program, there may have been a cost avoidance but there was certainly not a cost saving.

The plan to charge offenders for the cost of electronic monitoring programs may be superficially attractive, but even with the sliding-scale model proposed by Ontario, there are serious problems. The figure of \$8 a day for electronic monitoring has been justified on the basis that halfway houses were charging the same. This argument overlooks the fact that halfway houses were providing accommodation and food that the person would otherwise have to be responsible for anyway. In fact, the relatively cheap accommodation gave the person the opportunity to save from employment earnings in order to be able to pay the rent required to set up in his own room after release. The electronic monitoring fee only adds to the financial burden of released inmates. American programs were found to shy away from indigent, subsidized ex-offenders in order to demonstrate that the programs were cost-effective. These programs almost inevitably boast of their cost recovery success.

A system of incarceration which can inexpensively turn any home into a jail must be viewed with great concern. By its very nature, electronic monitoring is seductive and expansionary. Once in place, it would be extremely difficult to terminate such a program. A program that is promoted as a measure to increase public safety and has associated with it notions of gadgetry and science fiction

computerized control systems will always appeal to those who feel that any measure of supervision, control, inconvenience or just plain harassment can be justified.

There are ways which are much more effective than electronic monitoring to reduce the use of imprisonment in Ontario. We have documented and forwarded to the Solicitor General and Minister of Correctional Services and his officials our proposals for ways in which temporary absence and parole could be reformed to bring about substantial reductions in the use of imprisonment without the need for new legislation. In the same document we have also presented estimates of substantial cost savings which could be achieved through these proposals.

In summary, we are not opposed to electronic monitoring because we are opposed to or fear technology. Nor are we opposed to electronic monitoring because we cannot conceive of any circumstances in which a given individual might benefit from being placed under those circumstances. And we are aware that, given the choice, many inmates would choose electronic monitoring over imprisonment.

Our concern is that we view electronic monitoring as the genie in the bottle that while in the bottle promises to be good, promises to do exactly what we want it to do and not to get out of control, but that once out of the bottle can't be put back in and can't be controlled.

We are concerned that electronic monitoring detracts from the programs and services that actually make a difference in terms of reduction of crime. We are concerned that it takes resources from those other programs, and in the case of halfway houses has replaced those programs that had much greater potential.

We are also concerned that in eliminating halfway houses we have removed a very important resource from those who already are lacking some of the key elements of success; that is, work, home, a telephone and a family.

The research on recidivism is clear. Appropriate programs directed at persons with specific needs can reduce recidivism substantially. Others have provided information to this committee on the effectiveness of programs and the related risk/need assessment tools, such as the Coalition of Community Organizations. We hope that in developing social policy for corrections in Ontario, you will understand that harsh and expensive punitive measures are ineffective. Alone, they do not reform offenders and they do not restore confidence in the criminal justice system. The failure of harsh measures only encourages demands for more and even harsher measures.

Public safety and public confidence, in our view, can only be achieved by measures that steadfastly pursue objectively measured effectiveness. Punishment is an expensive, though admittedly popular, indulgence. In times of financial restraint it's wasteful, and at all times it only promotes future victimization.

The Vice-Chair: Thank you, Mr Stewart. We have approximately 10 minutes per caucus. Ms Boyd.

Mrs Boyd: Thank you very much for coming. You've done a lot of work and in your fact sheet brought together some of the information that before was kind of scattered for us. So I really am appreciative that you've done this, and we'll be certainly checking back in terms

of the way in which this information compares to what we were hearing from the various groups that are in favour of this as a proposal.

For example, you talk about the issue of the effect that electronic monitoring has had on the—dare I say?—class breakdown in prisons in jurisdictions in the United States, and yet Mr Nimer yesterday from Florida said, oh no, when somebody can't afford the cost, they subsidize it. I think he said \$720,000 or something—I think that's what I heard—as a subsidy to ensure that this in fact did not mean that those who do not have resources stay in prison and those who do have resources can afford to be out. I gather this is one of the major concerns that you would have, that this \$240 a month that \$8 a day would imply in our system might automatically mean a whole lot of people were not eligible. I think that may have been what the previous folks were trying to get at as well, although they didn't have the figures to do it with.

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Mr Stewart: Certainly, it adds to the problems of the person being released. Finances are always a major issue for those being released from jail. If one doesn't steal, then one has to find a job and manage. Without resources behind them, it's difficult under the best of circumstances.

How the program operates can vary from jurisdiction to jurisdiction, but in the United States when there are commercial firms, profit-making firms, operating electronic monitoring, cost-effectiveness is a very important aspect of their operation, and that's achieved by cost recovery in many instances. It's difficult for me to believe that under those circumstances there would not be reluctance in some cases to have large caseloads of individuals who are indigent. There's some evidence from some of the global literature in the United States that indeed people without resources are not fairly represented in these programs.

Mrs Boyd: In fact, there's some evidence that's been recently available in Ontario to that effect. The commission on systemic racism clearly showed that one of the problems is the lack of likelihood that someone is going to have paid employment having a real effect on whether or not they get sentenced to jail in the first place.

We certainly have lots of evidence that has been prepared to say that already those who are likely to face incarceration are those who are least likely to have resources. If you add on top of that a layer of you're there, you're incarcerated, your chances of getting out and getting the opportunity to become self-sufficient again are further limited by the resources that you may or may not have. That has a fairly serious effect, it would seem to me, on what would actually result in terms of our ability to assume any kind of success in rehabilitation.

Mr Stewart: I think the whole existence of intermittent sentences reflects that very fact. That's why intermittent sentences were started, to accommodate those who had employment and were otherwise stable but had to face a mandatory jail term.

The other side is the point which I made earlier, that when a person was staying in a halfway house, they were in a position where they could actually save for the time when they would leave the house. To find a room

requires money up front. To have the essential dishes, if you're going to be doing your own cooking, basic clothes, employment, requires that a person have some resources behind them. The electronic monitoring assumes not only that the person has all those resources in place, but also has the ability to contribute further. That can only be a barrier to those who are not already employed and have family support and a telephone and all the resources.

This is a group that we generally don't worry very much about in criminal justice. This is a group that have a very low likelihood of recidivating in the first place. So it's unlikely that electronic monitoring can improve that.

Mrs Boyd: Is it your position that the CRCs did serve that group of people?

Mr Stewart: They certainly served some of that group. I think it could have been much better in many circumstances. I was concerned that often people went into CRCs who didn't need that resource, and a large number of others who could have used that resource didn't have it available to them. It's my own view that CRCs are best used for the moderate- to higher-risk individuals rather than the very-low-risk individuals.

In Ontario, where sentences are relatively short—80% are serving less than six months—using simple detention as a strategy of public protection is at best six months. We really have to look at the period of the sentence as being an opportunity to try to influence the behaviour of that individual in order to have any longer-term benefit.

Those who are in need of a residence, and I see that as individuals who, first of all, may have no place to go, or second, those who need the structure of the facility, or thirdly, those who need the additional programs and services which could be organized or advocated for within those houses, were the logical group that would benefit most, and in the end they would have the greatest impact. Indeed, that's quite consistent with the research. The research shows that if you provide too much supervision and programming for very-low-risk offenders, you will increase the likelihood of them reoffending—they will actually do worse—whereas if you put intensive programming in for those who are considered to be the moderate- to higher-risk individuals, you will significantly reduce recidivism.

Mr Howard Hampton (Rainy River): Just a couple of definitions. In the Ontario system, do you have a sense of what a high-risk individual is? We're not dealing with criminal types, in my view, we're not dealing with criminal behaviour, in a lot of the Ontario correctional system.

Mr Stewart: By definition, of course, it's those serving less than two years, so they can have quite a range of behaviours. Some of them indeed were very violent and very serious offences in some cases, relatively few in proportion. It's certainly behaviour that we wouldn't want to minimize, but the fact that they're in that system for a relatively short period of time, in my view, is the very reason why using detention is the strategy of public protection. Protection is so futile that the obligation we have is to try to reduce reoffending, I believe. What that implies for me is to place your resources with those you worry the most about.

It's my view that most of the preoccupation with the system is to avoid risk rather than to reduce risk, that the whole nature of parole, the whole nature of temporary absence and now electronic monitoring is to define very carefully the group that's likely to succeed regardless and put them in the program so that you'll have a high success rate, which of course you would have had regardless. But the fact is that when we look at behaviour change, it's those who are the higher risk where you can actually get the better results. You will also have more failures, of course, and some of them will be ones that will attract considerable public attention. But in the long run, we're actually making the community safer.

Mrs Boyd: I guess my last question to you is, you make a very strong case that you see this as an add-on to the system; you see that the experience of other jurisdictions is that the only thing that will make this look as though it's not an add-on to the system is the removal of the CRCs, which in fact most of the other jurisdictions have retained. So it really is a shell game in terms of moving those resources around.

Mr Stewart: Although the two notions have been raised together, it's very difficult for me to see that those who would be subjected to electronic monitoring are anything similar to the group that needed halfway houses. At the same time, I think that electronic monitoring, by its very nature and the very fact that it can be justified with so many rationales with so many different ideologies behind them and in fact is being operated in such diverse ways across North America suggests that, with time, we will have a system that will simply be added on to existing programs and services, at substantial cost. It's my view, particularly with virtually the total absence of any evidence that there have been any cost savings or prisons closed where electronic monitoring is in place, that we've added a significant cost to corrections that has no rehabilitative potential. That, in my view, is really tragic.

Mr Hampton: One more?

The Chair: Yes.

Mr Hampton: Part of the problem the Ministry of the Solicitor General and Correctional Services has is that it's got a number of smaller jails, old jails, in smaller cities and towns in Ontario, and it's been struggling to find a way to close those institutions for some time. Can you see how this strategy, using electronic monitoring, might facilitate that? Can you see how this strategy would have to be adapted or changed, the strategy of electronic monitoring, to permit that to happen?

Mr Stewart: I don't think that's possible at all. I don't think it could because of some of the reasoning I referred to earlier. In order to reduce the prison population by 350 in the province of Ontario, 4,200 people would have to be released for one month. That's, as I pointed out, 5%. No institution is going to close because they've been able to decrease their population by 5%. In some institutions, that wouldn't even account for the double bunking in their institutions.

Mr Hampton: Just to be clear, these are very small jails. They may have a total population of, say, 20 or 30 people. Generally, it's my understanding that their actual inmate population is very low.

Mr Stewart: Well, unless you can pool people in areas and concentrate prison populations quite substantially, I don't think you would ever see the numbers through electronic monitoring in Ontario that could, alone, justify the closing of an institution. There are other ways to substantially reduce the prison population overall. I'm not even sure that concentrating on small jails is necessarily the best strategy.

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It's tempting because they're obviously inefficient, and they seem costly, but so are hospitals in small communities. Small communities' institutions tend to be more expensive than large ones, but when we talk about a substantial strategy that could reduce incarceration levels that could lead to the closing of major institutions, for instance, such as Guelph, we could see substantial cost savings within the ministry as a whole. That I think could be achieved through substantial revisions to the way in which gradual release is currently organization, particularly the integration of temporary absence and parole.

The changing and much more sophisticated substantial method of classifying people with respect to presumption of release could have a dramatic effect that would far outstrip any cost saving that might be achieved through electronic monitoring and wouldn't even require, in my view, legislative change.

Mr Garry J. Guzzo (Ottawa-Rideau): I apologize that I didn't hear your entire presentation. Don't hesitate to advise me if I'm in error and please don't misinterpret anything I say. I'm very familiar with the operation of the John Howard Society in eastern Ontario and indeed in other places, including Niagara and Welland.

I heard you suggest that you wanted to see a reduction in the criteria for the temporary absence program. Did I misinterpret that?

Mr Stewart: It might be interpreted that way, but that's not what I said. I said that I thought parole and temporary absence could be integrated into a simple authority and a system in place that categorized people according to some major criteria which for the lowest ones could change the presumption of release. That in turn would result in more people being released on temporary absence.

Mr Guzzo: I see. It would bring on the advent of parole earlier, but not necessarily make the requirements for the temporary absence program less stringent.

Mr Stewart: Two parts of parole and temporary absence are complicated. One is the decision-making process, how a person is actually released, and the second is the supervision process.

One problem with parole in the province of Ontario is that the process takes so long that people serving less than six months generally aren't even considered for it, which means that the group that is probably your lowest risk never gets parole, which in itself is wasteful.

At the same time, the temporary absence program is potentially a more efficient releasing mechanism, but it's used very cautiously because it's entirely dependent on the superintendent of the local institution who is often working outside of any kind of a policy context that helps him; and because of the personal risk of decision-making, it tends to be used very conservatively, which is one of

the reasons why halfway houses had so many people going to them who were very low risk and were not being used for those we would be more concerned about.

Mr Guzzo: All right. My other question was with regard to front-end option in terms of sentencing. You suggested that under the EM program there now exists a front-end option. Maybe the words are mine, not yours, and I apologize if that's so. I interpret that to mean there was an option by the judge, by the court, to use the EM program.

Mr Stewart: One concern with electronic monitoring has always been that it would just be used to enhance probation rather than really reduce the use of incarceration. One response to that is to make it purely within the control of correctional authorities to determine whether a person has that option and not giving it as an option to judges. With intermittent sentencing being available to judges along with their recommendations, it seems to me quite possible and quite likely that judges would use intermittent sentencing as a way to sentence a person to electronic monitoring.

Mr Guzzo: I follow you. Thank you very much, sir.

The Chair: Thank you, Mr Stewart, for your very thoughtful presentation and your patience in waiting for the time of your presentation.

Mr Stewart: Thank you. I appreciate it.

The Chair: Mrs Boyd, you had a point of clarification.

Mrs Boyd: Yes. I wonder if Mike could come up and answer just a couple of questions. I'll explain the context.

When we were having our meeting over in MNR around the BC program and hearing a very detailed description of the nature of supervision in the BC program, I certainly didn't get a sense from the presentation we had from you folks about the exact nature of the supervision you were planning and whether it paralleled very closely the kind of thing we were seeing in BC, with the hand-held breathalyser and the visits and the responsibility on the electronic monitoring officer to make referrals into the community. Can you clarify that for me?

Mr Michael O'Neal: Certainly I can. The earlier presentation, as you'll recall, focused to a significant extent on introducing the committee to the technology. Perhaps I didn't emphasize enough some program aspects of Ontario's introduction to electronic monitoring.

As you've pointed out, we didn't break new ground here in Ontario. I heard from an earlier presenter that we introduced electronic monitoring quickly, and indeed we did, but I want to make it clear that we introduced it carefully and that we did so after consulting other jurisdictions. One we consulted at great length was British Columbia. We consulted with them around the selection of the technology, but we also consulted them on the development of the program that would help to successfully support the introduction of the technology, and our program in many ways mirrors what is in British Columbia.

I think you heard from the presenter from British Columbia that doing home visits is an integral part of the program and something they attribute the fairly high success rate to.

We in Ontario have built that into our program as well. We have three levels of supervision for electronic monitoring, the first of which involves home visits once every two weeks at a minimum, telephone calls to the inmate twice per week at a minimum, telephone calls to relevant collateral contacts at least once per week, a review of the inmate's monthly phone bill and drive-by checks once every three weeks at a minimum.

That's our minimum level and doesn't mean that officers won't be consulting significant others more frequently than that or making visits on a more frequent basis. Of course, it depends on how the individual is performing on the program at any point in time.

The other level of supervision is a medium level. Anyone who gets out on electronic monitoring initially is treated as a maximum case, but the medium level requires home visits at least once per month, telephone calls to the inmate at least once per week, telephone calls to relevant collateral contacts at least once every two weeks, a review of the phone bill and drive-by checks at least once per month.

The third level is a cascade off electronic monitoring to straight extended TAP. We don't see this as at all inconsistent with the program. We believe that when offenders have proven they no longer require the degree of monitoring associated with the use of the technology, they should no longer have the technology to contend with and should be cascaded to a straight extended temporary absence pass, so we've allowed for that and built it into our program model.

Mrs Boyd: Can you explain to me why it costs \$45 in BC as opposed to your estimated \$17 here? There seems to be a tremendous credibility gap.

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Mr O'Neal: I think there's a case of misunderstanding in many respects. Some figures I've heard quoted related to an article in a newspaper or other media. We've always said officially that our budget for electronic monitoring is \$3.2 million, that we are shooting for a target of 400 offenders, and if we achieve 400 offenders and spend the full \$3.2 million and we have a running balance of 400 clients, we will be looking at \$22 per day for those clients.

How does that compare to British Columbia at \$45 a day? In British Columbia, the electronic monitoring officers do everything from start to finish. As I said to some extent in my earlier presentation, in Ontario we have utilized some of our existing resources to do some aspects of the electronic monitoring program process.

For example, we would utilize existing temporary absence pass staff to process the TAP application. We would use classification staff to administer the level of service inventory-(Ontario revision) to get some of that work done. We use the electronic monitoring officer to manage the case beyond that and to supervise the client once he or she has been selected and released into the community on the conditions of electronic monitoring and TAP.

Some of those costs were not added in because we're asking people to do the jobs they're doing anyway, but in this case with respect to clients who are going out on to

electronic monitoring as opposed to other forms of temporary absence pass.

Mr David Tilson (Dufferin): One criticism we've heard from a couple of groups that came forward is that contrary to what is done in halfway houses, there is no counselling for people who have drug or alcohol problems, anger management, those types of things. Is anyone going to be dealing with that or going to be trained on that topic, whether it be an electronic monitoring official or other people you've talked about? I'm looking for a response to that specific criticism.

Mr O'Neal: One comment was made earlier, a sort of criticism, that we weren't using probation and parole officers, that we were using employees of the institution to act as electronic monitoring officers, suggesting that perhaps people didn't have the skills to make referrals into the community. I take issue with that, particularly since British Columbia took exactly the same approach we've taken. They're not using probation and parole officers to function as electronic monitoring officers generally. They're using people who in most cases were working in the institutions and they've selected those individuals to act as electronic monitoring officers. Their program is successful. Their employees also make referrals to community agencies. Our employees I believe will be successful, and the program will prove that over time. I think they'll also be able to make successful referrals into the community.

While probation and parole officers have a skill set that's quite essential and that skill set is designed to deal with offenders usually on a longer term in the community, we have some very skilled individuals in our institutions as well. We have professionals who have been trained in classification, and some of those individuals are right now on temporary assignments as electronic monitoring officers. Many of those skilled individuals working for us are electronic monitoring officers right now.

The other thing we did, and I mentioned this earlier, is that in the 10 days of intensive training we provided to the first wave of electronic monitoring officers, we made sure to address many soft skill areas so that those individuals would feel confident in interacting effectively with clients and able to make appropriate referrals into the community where those referrals were necessary.

I believe that a combination of skills that were already there in seasoned correctional staff, along with the training provided as part of the introduction of the program, means that we have a program with competent staff that's able to make referrals to the community.

The Chair: Excuse me, Mr Tilson. I don't want to cut anybody off, but we are eating into our preparation time for the report, which is going to become critical because we've heard a lot of information. Unless it's very important, restrict it to a very short question.

Mr Tilson: It is very short. Do you believe that the counselling provided in the halfway houses will be matched by whatever is going to be provided through the electronic monitoring system?

Mr O'Neal: That's really difficult for me to comment on. First of all, community resource centres are not really my area of expertise. My colleague Frances McKeague

would be in a better position to comment on the programs in community resource centres. I can comment on the programming that will be available through electronic monitoring. As I've said previously, we will be looking to utilize existing resources in the community and make referrals there. Where necessary, I think it's worth noting as well, we did retain community resource agreements to be utilized with people who require residence, not for electronic monitoring.

The Chair: Thank you, Mr O'Neal.

Mrs Boyd: If someone cannot afford the \$240 cost, does that mean they are not eligible for the program?

Mr O'Neal: No. Being able to afford \$8 a day was not a requirement. Let me put it differently. If a person cannot afford the \$8 a day, we're not denying access to the program.

The Chair: Thank you, ladies and gentlemen. We are now adjourned.

The committee adjourned at 1746.

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Also taking part / Autres participants et participantes:

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O'Neal, Michael, manager, technology co-ordination unit, correctional services division

Clerk / Greffière: Donna Bryce

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Official Report of Debates (Hansard)

Monday 6 May 1996

Journal des débats (Hansard)

Lundi 6 mai 1996

Standing committee on
administration of justice

Electronic monitoring

Comité permanent de
l'administration de la justice

Surveillance électronique



Chair: Gerry Martiniuk
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 6 May 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 6 mai 1996

The committee met at 1535 in room 228.

ELECTRONIC MONITORING

Consideration of the designated matter pursuant to standing order 125, relating to the impact of halfway house closures and the introduction of electronic monitoring.

The Chair (Mr Gerry Martiniuk): I'll call the meeting to order of the justice committee. I see a quorum.

ST LEONARD'S HOUSE

The Chair: Our next witnesses are on time, and I thank you for that: St Leonard's House and Ms Elizabeth White, the executive director, welcome.

Ms Elizabeth White: On behalf of the St Leonard's Society, I want to thank the committee for the opportunity to meet with you on the matter of halfway houses and electronic monitoring. We have prepared a summary brief, which is at your places and may serve as a reference point for you after we've completed our presentation.

My name is Elizabeth White, and I'm the executive director of St Leonard's Canada. With me today are Mr Peter Aharan to my left, who is the executive director of St Leonard's London and who will speak with you about specialized residential services for the provincial client. Mr William Sanderson, executive director St Leonard's Brant, is to my right, and he will discuss the implications of community-based electronic monitoring programs.

Allow me first to briefly describe for you the St Leonard's Society of Canada in order to set a context for our participation in this presentation. St Leonard's is an affiliate-based organization which exists to support community agencies in their efforts to provide programs and services which make Canada safer by efficiently and effectively assisting people to live free of crime.

St Leonard's began in Windsor where it pioneered the concept of halfway living for men who'd been incarcerated in the federal system. Community volunteers determined the need for the service based on the difficulties men had in returning to their home communities after a period of incarceration.

An examination of their needs indicated that community-based supports could have a positive impact on the returnees' ability to integrate with society. In 1962 a house was opened that provided a structured and responsive program opportunity to assist the interested offender to make a successful transition to living independently in the community.

The success of the program has been reaffirmed many times over as other communities across Canada adopted the model of giving people a chance to establish themselves and live productively back within society.

St Leonard's has also sponsored the creation of a variety of other community responses to criminality. As the numbers of persons sentenced to long periods of time grew and men who had been separated from society for decades were returning to an unrecognizably altered society, St Leonard's developed a program specifically to address their needs. This program, called Lifeline, is now being reviewed for implementation across Canada.

With such services, the St Leonard's affiliates and many other community-based organizations provide the community component to the effective integration of former offenders. Because the people who use our programs and services come to us by choice, they are inclined to take advantage of the proven and successful services which we offer throughout Ontario and across Canada.

We are one of the organizations of community-based service responses to the need for communities to be involved in the criminal justice system. Others have appeared before you already on this particular issue, and there are some who are going to appear next week.

We have all supported the development of the brief of the coalition, which is also at your places today and which has been previously presented to you. My colleagues and I do not intend to revisit the detail in that today. Rather, we will develop some of the specialized issues of concern to us that have arisen during the course of this past year in this matter.

First, a word about community-based involvement and a slight distinction from community programs. The clerk's office very kindly provided me with a copy of the recent Hansards of your hearings, and I note in a few places references to a notion that the closure of community resource centres does not diminish the commitment to or the existence of community programs. Indeed, over 85% of the Ministry of Solicitor General and Correctional Services clients are not incarcerated. That doesn't mean that they are in community-based programs. Primarily they are in programs that are run by ministry and with ministry staff.

Our work is in the community-based program and services, and it is a different issue. Our agencies reflect the concerns of the citizens in their home communities. They develop within the community. They are a community response. It is the community's desire to use them to create a safer society. It's not a minor variance.

Community-based boards of directors reflect the community concern to manage its social responses, to take responsibility for the success of individuals who are trying to improve their way of living in our society.

In Ontario we need to encourage this kind of community taking on of responsibility. Many of the Ontario ministry staff are committed to positive results for persons under their mandate within the community. In fact, I would say virtually all of them are; "many" is an incorrect word. They work creatively and with great effort to support that integration. To the extent that they succeed in supporting a continuum of service provision for clients back into the community, they are part of the government's commitment to the reduction of reoffending. In other words, to shorten it: Successful community placements reduce recidivism.

The involvement of the community is necessary in order that the system may better reflect the concerns of our communities and respond to communities' needs for services to promote crime-free living. We are convinced that without the active participation of the community in criminal justice, the goal of a safe society is made more difficult and more fiscally expensive to attain. We all know that prisons are very expensive; we also know that they do not reduce recidivism. The contrary, in fact, appears to be the well-documented, researched case.

I can't stress the point often enough that community-based organizations exist to promote community safety. However, we certainly do not purport to have an exclusive on the mechanisms that can have that result. What we do have is the ability to creatively respond to changing needs for safety at the local level. We have that ability because of our volunteer base, our volunteer governance and the fact that our volunteers are in our communities. That is our foundation and our continuance is premised upon that volunteer activity and commitment.

It is our goal, as it is the goal of our colleagues in police and corrections, that we should all live in as safe an environment as possible. Through St Leonard's programs some of the components which enable our society to be a safer place are offered. We get more safety in Ontario for less money in both the short and the long term when we allocate our tax dollars to structured, community-based releases than we do when we use incarceration for persons for whom imprisonment will not and cannot contribute to their development of a crime-free lifestyle.

The fact is, the greater the static security interventions you use, the more it costs in daily dollars. So we know that to imprison costs around \$132 a day and that the cost of community interventions is approximately one fifth of that. Some say we need to incur the cost of imprisonment to give our society protection, and we do not argue. There are some individuals who need to be physically separated from society for at least a period of time, but we're talking here of those whose maximum length of sentence is two years less one day. All of those under the Ontario mandate are returning very quickly to our streets, as you well know.

So how do we buy the most safety for the dollars which we expend? It isn't, in my submission, by focusing on the low-end-needs individual. It is by identifying and

responding to the higher levels of need indicated by individuals and the barriers they face as they try to live in our society.

As the co-chair of the 1995 joint government community report on women in conflict with the law in Ontario, Women's Voices, Women's Choices, I had the privilege of examining in some detail the relative effectiveness of these very short periods of incarceration which are the provincial norm and the very significant needs indicated by the women in the system for assistance to improve their method of coping with the challenges of living in Ontario in the 1990s. Our findings were quite unequivocal and I recommend to you a review of the many excellent recommendations in that report. I consider they are, in large part, applicable to the much larger male population in conflict with the law in this province.

One key concept which I would bring to you is the need to maintain overall provincial standards, an umbrella if you will of guidelines as to service provision to meet need, but to thereafter have the government take a strong leadership role by supporting the implementation of local solutions as appropriate. That way you respond to community need.

The fact is that in some communities that will mean a halfway house; in another it may mean use of occasional bed space, and in every community it will mean access to trained, effective counselling. In a very few cases provincially, it will mean the use of our expensive prison accommodations.

The question is: What safety do you buy with imprisonment when you take people out of the community programs and put them inside? The research shows that at least 75% of those in Ontario jails are not convicted of crimes of violence. Yet the most recent information I have shows the Ministry of the Solicitor General and Correctional Services spending approximately 80% of a \$361-million budget keeping people locked up for a few months. We believe that the greater part of that money would be better spent enabling those individuals to become law-abiding contributors to society.

Financial resources are and will remain scarce. It is most prudent that the ministry allocate moneys to proven risk-reduction strategies for individuals of higher needs and risks. It is not useful to pay the tremendous expense of keeping people in jails when the short- and long-term expenses will be less if they are in a supervised community setting.

We know effective programs reduce recidivism. Ontario gets decreased costs and greater safety when it uses good community correctional treatment options. That research has been taking place for 20 years, and although some of the percentages may vary from place to place the overall results are certainly not in dispute. A few points on that:

The first is that without structure and encouragement, individuals in conflict with the law might not choose to seek out treatment. In earlier presentations the case has been made to you that individuals who were in halfway houses prior to October, 1995 could access treatment at other community centres rather than in the halfway house, and that indeed some did so. That is true.

However, experience tells us it is not enough to simply refer someone to the blue book. Treatment as a component of release is more effective than simply providing a list of supposedly accessible community resources when going out of the prison door. I say "supposedly accessible" because it is our experience that many purportedly available resources are simply not available to persons with a criminal record, particularly for persons with a record for a crime that is designated as one of violence.

Individuals may need the encouragement or support of a counsellor to get to the sessions, to simply cope with that one step. They may need representations from that counsellor to get access to a program that says: "A conviction for assault? You're violent. Not in our place, thank you very much."

The development of electronic monitoring in North America has been very swift, and it sometimes appears to me that the technology is advancing far more quickly than our understanding of the implications of its use. The comments by earlier presenters of their experience in developing electronic monitoring programs that effectively respond to community needs clearly indicate that hardware alone is not the solution.

I noted with interest the comments of your assistant deputy minister, corrections branch, that a result of the Mimico experiment was that the technology worked. I agree that it did. However, I would go much further in discussing its impact.

At that time I was the executive director of Elizabeth Fry Ontario, and in that capacity spoke often of my network's position concerning net-widening concerns for electronic monitoring and the dehumanization that we feared would be the result of the use of the program. In fact, in the particular instance of the pilot program, we found the involvement of the officers who ran the program to be such that it was elevated far beyond an electronic check-in. Those officers met with, counselled and supported their clients, all of whom had been subject to a rigorous selection process, on such a frequent basis that the level of support enjoyed by the men in the program was equal to the very highest levels of service. It was the attitude and role played by those officers, not just the technology, that worked in that pilot project.

Although I never did see the final report on the pilot project, it is my belief that there was a high ratio of staff time involved for the very few number of persons who were qualified to be on the program. It certainly never attained the kinds of numbers that we are now told are required to achieve the low per diem that would become very cost-effective for this province. Yet the higher the numbers on the program without adequate increases in funding for counselling staff, the less likely it is that you will get those good interactions that worked so well in the Mimico project.

Our strong suggestion to you is that halfway houses are needed for those in the provincial system with a higher level of need. Structuring electronic monitoring to be for those of low need will not significantly increase community safety and will not replace the effective, efficient houses which supported community-based corrections in Ontario prior to October 1995. In a reorganized corrections setting, some of those houses may not

be needed, but in my submission, without implementing the diversions and alternatives that could be possible on a large scale, we have as of last October lost access to an excellent, efficient resource in the continuum of care and we're not seeing a replacement for it yet.

1550

Our scarce resources need to be addressed to those whose level of need indicates a likelihood of reoffending unless supported and motivated to change. Mr Aharan and Mr Sanderson both have comments for you which indicate specific ways in which this can be achieved.

Ontario's experience has been that the appropriate use of alternatives to incarceration is cost-effective and promotes community safety, but there is no system that guarantees community safety and we fool ourselves if we look for one that can do so. Tragedies happen. We can learn from them. We can improve our systems as circumstances change and as our investments in research lead us to develop improved interventions. But we will never be able to eradicate all crime. What we can and must do is to take all steps within our knowledge and experience to reduce the likelihood of criminal activity. A range of actions are available to us to do so. One of the most successful, cost-effective and human-development-effective methods we have is a conditional release system with a variety of options to address criminogenic factors and increase the chance that an individual will live crime-free in the future.

Residential services, where appropriate, are part of that response, as is appropriately run electronic monitoring. We must not be confused by some quick savings of dollars at the expense of retaining our ability to respond to crime in the ways which research has proven to be effective. We should not replace interventions directed at the higher-need individual with interventions that are designed only for low-need persons. I wish you well in your deliberations on these important and most complex issues, and thank you for the opportunity to speak with you.

Mr Peter Aharan: I too add my thanks for the opportunity to appear before the justice committee. I'll condense my remarks in an effort not to duplicate those previously, and I believe subsequently, expressed. However, I would like to really emphasize the suggestion that what we are speaking to here is how to best allocate scarce resources and how to address a continuum of care. We clearly understand that not everybody will succeed in a community-based program of some description — probation or perhaps even a diversion program if we should see the expansion of that at one end of the continuum. I think we all equally recognize that incarceration for all persons is unnecessary, and certainly in any economic climate is unfeasible.

St Leonard's, through Elizabeth's presentation, has made a point of stressing our experience in providing community-based correctional programs, and certainly we sit here very proud of that fact. I would like to offer a few suggestions on how I believe, based on our experience at the operational level, perhaps greater efficiency and increased community safety, along with shared accountability among knowledgeable and experienced stakeholders, is a common goal of all Ontarians and improves that community safety.

Two particular issues to highlight, if I may: One concerns electronic monitoring and its ability to achieve a releasing mechanism for the multitude of individuals who present themselves before the correctional system. I believe the criteria currently established, and in fact I think any criteria established, by the ministry will be too restrictive to achieve the release rate that will be necessary to achieve economic targets. Those economic targets, I believe, are possible and those release rates are achievable, getting back to the issue of resource allocation.

Halfway houses provide a community-based location from which appropriate supervision and programs would be delivered to residential clients and expanded I believe quite feasibly to non-residential clients, thus expanding the potential eligibility and maximizing this scarce resource. There is clearly in this suggestion the notion of a shared accountability too, with the ministry, with the community and directly to the community through the board of directors of the community-based organization.

Secondly, I feel that electronic monitoring will not provide appropriate programs for special-needs populations. There are many special-needs populations, and by not mentioning all, I do not wish to downplay the significance of those groups. I would, however, like to highlight two in particular: those individuals who find themselves before the justice system who are developmentally challenged persons and those persons who are ex-psychiatric patients. I will expand on that further.

Thirdly, I believe there's a very significant number of clients who do not require the costly services of a prison setting but do not have the appropriate social or community supports to be released on some form of electronic monitoring. What I mean by that is those offenders who are living in the community, their living arrangements have broken down and they become unsuitable for electronic monitoring.

To illustrate this, I would like to speak to the experience of one setting run by the St Leonard's Society. This particular setting was able to intrude into the correctional system in a way that went well beyond social housing and achieved an actual cost reduction over prison beds. Over a four-year period, the mean length of stay in this facility was approaching 60 days. The occupancy rate was 95%. It did not lay fallow during this period. The sentence length from which the clients came to the setting was an average of 175 days. That's approaching a six-month sentence. The offence description of the residents in 26% of the cases involved violence, and an offence history included violent offences in 29%.

Persons were discharged from the program unsuccessfully, or determined to be unsuccessful, in slightly over 12% of admissions, or more positively expressed, over 87% of those persons admitted with this offence profile were able to complete that portion of their sentence successfully. The number of persons charged with a new criminal offence while in residence was 1%.

The annual recovery in room and board — that is to say the contribution to their own care — exceeded \$30,000 in each of the four years, and that is a four-year period ending in fiscal year 1995. The ministry per diem, as noted in other submissions, was in the range of the average at \$82 a day.

Current information suggests that electronic monitoring alone will not adequately service this offence profile.

I would like to point to another specialized area and illustrate where I think the judicious and strategic use of halfway houses may provide the ministry with that appropriate range of services along the continuum. This concerns a facility which cared for ex-psychiatric and developmentally challenged offenders. I think we all agree that if there is extensive consideration going on throughout the community — and certainly in my region of London we have a psychiatric hospital closing. I believe that process is under way, and some 300 beds will be reduced in the institutional wing of psychiatric care. Those people will be in our community and, like any persons in our community, that increases the likelihood the persons will come in conflict with the law.

I think the same can be said for the deinstitutionalizing efforts in the Ministry of Community and Social Services concerning the developmentally challenged in institutions which have historically housed those persons. They are being released back into the community, and there's much research to suggest that is the appropriate strategy to take. However, those individuals will, in certain percentages, confront the criminal justice system, as they are now in the community in greater numbers and in greater frequency.

I do not believe the criminal justice system, and particularly a prison environment, has the best resources at its disposal to manage those offenders. Access to doctors, therapists or other necessary interventions are likely severed. As we continue to close long-term-care facilities and discharge increasing numbers of, as the justice system has referred to them, mentally disordered persons to the community, it must be concluded that this number will increase.

1600

St Leonard's experience indicates that these offenders come into conflict with the law as part of an overall deterioration in their community support. Aging parents, exhausted caregivers and overtaxed community resources often precede that individual's conflict with the law. Once identified as having anti-social behaviour characteristics or conduct disorder, these persons find increasing difficulty in accessing or maintaining their access to community-based supports.

Halfway houses, certainly in the instance I'm reporting on and, I believe, in a broadened capacity, have the opportunity to access specialized community services, re-establish and monitor vital community support and reduce the potentially debilitating aspects of incarceration. The restoration of support systems, in concert with supervision, promotes public safety. It's highly doubtful that the application of an electronic monitoring anklet alone will assist these particular offenders. Unsupported releases to the community will result in an increased demand on various systems, most notably, I suggest, the health care system and the justice system. They are high-ticket, high-cost enterprises.

The special needs of the ex-psychiatric offender or the developmentally challenged offender, coupled with the needs of the public, are best addressed through a correctional system that matches the offender with the appropri-

ate institutional and community-based service. I think that really is the cornerstone of a theme that many community organizations would wish to present to you. The concept of scientific risk and need identification linked to a continuum of quality services provides the ministry with the capacity to maximize community safety and reduce costs at the same time.

The opportunity, I believe, exists to re-examine our correctional strategies. A revised mandate for halfway houses, integrated with a comprehensive release strategy, maximizes resources and promotes public safety. Later, we will allude to opportunities that exist to develop cost-shared linkages with federally funded facilities and enhance a network of available resources and facilities. Modern technology has the potential to complement existing release programs.

A revised system of gradual release, matching offender risk and need to a cost-effective, quality correctional program, is achievable. The strategic re-establishment of halfway houses will help ensure that Ontario has the capacity to meet the challenge of safeguarding its communities.

I'd like to turn it over to Mr Sanderson.

The Chair: Mr Sanderson, we have two minutes of the half-hour, and our next witness, Mr Clinton, has kindly permitted us to encroach in a small amount. If you can do your presentation within two minutes, or three at the most, then we'll have two minutes of questions from each caucus. Is it okay if we proceed that way? Thank you.

Mr William Sanderson: Just to wander off the script then, the script is part of our package here which gives you a more thorough overview of what we have in mind.

Essentially, the St Leonard's Society has submitted a draft proposal to the Ministry of Correctional Services and the Solicitor General to establish and operate an electronic monitoring program for offenders in Ontario. Our basic position is that we feel electronic monitoring may well have a place in the continuum of care that is currently being utilized in the community, providing certain factors and certain goals are kept in mind by the government.

Just as a brief overview, electronic monitoring is an alternative form of incarceration which allows offenders to serve their sentences in the community by wearing an electronic bracelet which transmits a continuous signal to a receiver in the home, and this in turn transmits to a central monitoring device which is a computer. Currently this system has been set up by the ministry on a pilot basis, and the idea is to basically determine the whereabouts of the offender.

The basic concern we would like to bring to your attention or the need issue we'd like to bring to your attention is that the hoped-for result of the program is to reduce crime and create a safer community. We just wanted to make you aware that most of the research to date on electronic monitoring indicates that if you hope to reduce recidivism and increase public safety, electronic monitoring must be accompanied by other community programs, many of which are already being operated by the St Leonard's Society in Ontario now. These programs have, generally speaking, two significant components.

One is that there is some relationship between the programs being operated and the risk and needs these offenders pose for the community. These are things that have been evaluated, such as antisocial attitudes, antisocial associates, criminal history, personality patterns, early behaviour in the home and in the school, and the use of substances.

The second feature of the programs that's important, after the risk and need has been assessed correctly, is that a program generally addressing that level of risk is there. In addition to providing the electronic monitoring, we believe the committee should be aware that other programs, such as family counselling, substance abuse counselling, cognitive skills training, anger management and so on, need to be available to make the program successful.

We are not opposed to electronic monitoring, providing there is a program associated with it and that it is seen as part of a continuum of care, and providing that these programs that accompany it try to address the risk and need of the offenders involved. We feel the St Leonard's Society would be able to assist the community with these programs.

Just to close, I'll give you a brief overview of some of those programs we do offer.

The Chair: Sorry, Mr Sanderson. You're running way over time and we will not have time for questions, if I may stop you there. Each caucus will have two minutes for questioning, which it will be strictly enforced because we are encroaching a little too much on Mr Clinton's time.

Ms Annamarie Castrilli (Downsview): Thank you for coming. I know there's so much to be said on this subject that it's kind of difficult to keep to the time. Since you're dealing with the electronic monitoring program, I'd like to give you the opportunity to round off what you were going to say, very shortly: how you think it'll work, how you think St Leonard's Society can assist in the program.

Mr Sanderson: The reason the St Leonard's Society could help is that it is already, so to speak, in business with the government and has been for many years, providing a variety of related services. For example, we operate young offender residences at present. We operate a very extensive community service order program. We currently provide the intermittent weekend work programs for inmates being released from the institutions. We provide intensive probation and parole supervision. We provide impaired driver awareness and family violence education programs. Many of the people being released to the community are already under supervision and are already being counselled and worked with in the community by people who work for the St Leonard's Society. Basically, the foundation is there, and the relationships with the ministry are there and the funding is in place.

The other advantage is that we have — and this was alluded to earlier — a community-rooted organization with volunteer boards of directors who come from a variety of walks of life, who come voluntarily to sit at the meetings every month and basically plot the policies and procedures for the society across the province. There is a voluntarism there and a commitment we can build on and use, rather than recreating the wheel.

Mrs Marion Boyd (London Centre): Thank you all for coming. I really found it very interesting, and of course, having worked a wee bit with St Leonard's in London, really agree with what you were saying, Peter. Elizabeth, you just touched on this, and I wonder if you could expand for us your fear that electronic monitoring may widen the net and therefore cost more in the long run. That has been the experience in some other jurisdictions, hasn't it?

Ms White: There is one particular area of concern for me; that is, I've seen mention of a possibility of using electronic monitoring together with a probation order. Probation orders in this province have grown and grown and grown, with add-ons and add-ons over the last 10 years. To then further add on to them by the addition of an electronic monitor is unnecessary and unnecessarily expensive, in my estimation. If a person is fine to be in the community on an order with certain conditions, they don't need an electronic piece attached to them. That would be the prime example I would make.

1610

Mr Ron Johnson (Brantford): I want to thank you for your presentation, and a special hello to you, Bill. For those who don't know, Bill's from my riding and we've worked very hard in the past, both on this proposal and others, from this group. I want to congratulate you on the great job you guys do in Brantford.

You've indicated that you have submitted a proposal. Of course I've seen that and we've forwarded that to the ministry. I am one of those who believe we need to look very closely at contracting those types of services out, especially to non-profit groups that have the background and experience. Can you fill us in briefly on what you've done to prepare for this type of initiative, what kind of background and that sort of thing? A quick overview of the kinds of things you've been able to do with respect to the proposal and some of the suggestions.

Mr Sanderson: With respect to the preparation of the proposal itself?

Mr Ron Johnson: Yes.

Mr Sanderson: When we first learned electronic monitoring was possibly coming to Ontario, the St Leonard's Society of Canada sent representatives from our society to various parts of the country and the United States to research the experiences there. Those experiences are fairly well documented now in terms of the program being operated in the United States for quite some time and in British Columbia now for some three years.

We tried to take bits and pieces of what we learned and bring them back and put together the best of what we could find. The essence of what we learned was that you just can't put a bracelet on somebody and expect it to be effective. You have to have a supportive program along with it grounded in solid research about what happens with criminogenic behaviour. That's essentially what we came back with: that you had to have programs which address offenders' needs and risk levels if you expect the program to be successful.

That's really what we wanted to convey in the program, and we believe the St Leonard's Society is able to deliver this because we're already in the community and

have been for many years, delivering similar related programs. That was the major thing we did to get ready.

The Chair: Our time is up. I thank you very much for your presentation. It was well received.

ONTARIO HALFWAY HOUSE ASSOCIATION

The Chair: Mr Clinton, on behalf of the Ontario Halfway House Association, we've extravagantly used about eight minutes of your time, but with a little discretion, so I'd ask you to proceed.

Mr John Clinton: Thank you very much. For the record, I'm John Clinton. I'm the vice-president of the Ontario Halfway House Association. The Ontario Halfway House Association is a professional organization made up of representatives from various service providers in the province of Ontario with the mandate of providing services primarily to federal offenders released in this province.

Because it's a professional association, I also have a real job. Probably one of the reasons I was so accommodating to the St Leonard's Society is that I'm the executive director of the St Leonard's Society in Hamilton. I'm following along behind St Leonard's, but in this instance representing the Ontario Halfway House Association.

I'm referring to the brief you've already had presented to you — no more paper to read — but I want to put, if I can, a federal slant on that brief and what I see as being the critical issues.

The brief recommends a range of approaches. I want to refer to a document put out by Correctional Services Canada called Contact. It was written the same week that the halfway house closures were announced in Ontario. Quoting from that document, "Halfway houses are a safe and effective way to manage any possible risk to the community that offenders present." It goes on to say, "Because they allow for safe gradual release of offenders to the community, halfway houses are a vital part of the federal correctional process."

It may have been that one of the considerations in the closure of halfway houses was that they were in some instances being underutilized. We've experienced this in the federal circle as well. However, rather than opting to simply get rid of it, we've opted to first try to take a look at the problems of utilization. There are so many barriers to release that people are ending up being warehoused in the institutions who could very well do their time in the community.

I think the brief speaks really well to the fact that the thing we should be trying to do is to not catch everybody up in the most expensive and least effective part of the system. Any research, which we've all looked at, seems to show that: that the institution gobbles up all the money yet there's nothing to support that it really does anything other than provide a very limited temporary solution and in fact is destructive because of the dehumanizing effects of incarceration; that we have to bear some responsibility for releasing people back into our communities who are worse off than when they came in.

My recommendation is that we should have addressed what the barriers to release were. In the federal system, we also took a look at funding issues connected to that so

that taxpayers aren't funding unused resources. Also, we should have explored and encouraged — and this is where I really want to drive with my presentation — cooperative use.

I really believe that if you took a representative from Mars and brought him to Ontario and tried to explain the correctional system, with some federal and some provincial, they'd go, "You do what?" It's awfully confusing for us to understand. It's awfully confusing for us to explain it to any other person. What we really ought to be doing during these times of constraint, these times where we have to examine effective use of our resources, is taking a look at how we can work together, how we can cooperate.

At this juncture, while we are in danger of throwing out the baby with the bathwater, I don't believe the baby is gone yet. There is already a structure of halfway houses in place; some of the halfway houses that were closed are still available. And in order for some of the reforms the government is proposing and for electronic monitoring to be effective, we need to have resources in the community.

There are federal halfway houses out there that were affected by the loss of provincial contracts. We all know that small isn't very effective, that a larger halfway house can operate more effectively, provide a broader variety of services and do it more cost-effectively. We could now be exploring the use of existing resources out there in ways in which we could join services together, piggyback only one set of administrative charges, and all kinds of experience and knowledge could be provided to the offenders.

I just have a couple more points and then I'll be happy to entertain your questions.

I believe the first criteria we should be trying to establish are not to criminalize the unnecessary, and the first stage would be to not put people into the system who don't need to be there; that we use resources where they make the most sense, and incarceration really only makes sense when somehow the public is at risk; that we don't allow local communities not to own part of this problem of corrections. This may be the best way to change the current public attitude towards the offender. It's being driven now by fear and ignorance, and fear and ignorance are, I believe, what's driving the current political agendas. It's only reasonable that you as politicians are trying to be responsive to the electorate.

But halfway houses, because they're managed by community volunteers, are ways for the public to become involved in correctional issues, ways for them to gain insight, knowledge and information into the offender and those kinds of programs and services that work. We all know that the offenders whom we speak about are going to come back into our community. They're going to live there again, and it only makes reasonable sense for us to make decisions with that knowledge always held firmly before us. I don't believe that we should make the mistake of somehow continuing to tell the public that the police and the courts and the prisons can take care of this problem on their own, that all we need now is a little bit of electronic monitoring; just give us your money and we'll fix the problem.

1620

This is a community problem. These are members of the community. They don't come from Mars. We need to involve the community in correctional issues. Halfway houses are a good vehicle to do that. Halfway houses should be expanded to be considered not just residential centres but true resource centres in the community to provide a variety of services.

The question before us now, as I conclude, is — that we come to our senses on this — will the resources still be there when we finally come to our senses about what we really need?

The Chair: Thank you, Mr Clinton. We have five minutes per caucus and we would start with Ms Boyd.

Mrs Boyd: Thank you very much for your presentation. Some of the methods that you were talking about whereby this continuum of justice could be developed and cost savings in fact realized were presented to the government prior to the closing of the halfway houses, but as I understand it, there was no discussion with you of those suggestions and no real effort to look at implementing some of those suggestions.

Mr Clinton: Not meaning to speak for the service providers who are delivering provincial programs, my understanding is that the closures came very suddenly, without consultation, without exploring whether there were options in fact that could be used, if there was a problem, to find alternative ways to continue the service, keeping the good parts of what was working, and if necessary, only getting rid of the things that were ineffective and not working. I don't think any of us have any difficulties with the system becoming more effective.

Mrs Boyd: And you do feel very strongly that there are ways, if the federal and provincial corrections ministries were working more closely together, to achieve the kind of community-based service for the appropriate group of convicted people in a much more effective way?

Mr Clinton: Yes, and I believe that there are examples of that where it's already being done, and I turn to the Elizabeth Fry Society as an example of organizations that have joined together and provided services for federally sentenced women as well as provincially sentenced women. You can see why that would have happened. There are by contrast a lot fewer women in the system and it would not be possible for houses to operate if there weren't some sharing of services.

Mrs Boyd: I think we had the only one, the Proudfoot House, which was I think only for eight women. I agree with you. I think there ways that could happen and it could expand to the group that is specifically best helped through that kind of service, and that crosses over whether it's two years plus a day or two years minus a day.

Mr Clinton: Minus a day; right.

Mr David Tilson (Dufferin-Peel): I think the proposal is that you qualify for electronic monitoring if you're 180 days or under either time served and that the average is around — what? — 60 days?

Mr Clinton: I'm not the expert on electronic monitoring.

Mr Tilson: The question I have is, when we talk about community programming, counselling, other such ser-

vices, why do we need bricks and mortar? Why do we need buildings? In other words, I assume that many of the halfway houses will have programs within those facilities. But is that necessary, particularly when you hear some of the — and we've heard communications from experiments in British Columbia and Florida — comments that electronic monitoring keeps the prisoners from living under the influence of other criminals, allowing offenders to continue to work and support their families and therefore eases the strain on social assistance programs.

My question really in short is, why do we need bricks and mortar to rehabilitate or to attempt to provide some sort of rehabilitation or counselling to criminals or offenders?

Mr Clinton: I think it's a great question, because I think it really helps to point out that it's not a black and white issue. It's not that we need one or the other. I believe that halfway houses may in fact be the best vehicles turned into not just residential centres but to resource centres in the community, to provide the additional services that those people who don't require a residence require. I can envision as a resource centre that some people may not need electronic monitoring but they might just need to check into a resource centre on a regular basis and perhaps receive programming or treatment that might assist them and that others may in fact need electronic monitoring but that they too should have some assistance, something to help meet the deficits that otherwise are only going to cause them to reoffend as soon as we take the bracelet off.

Mr Tilson: So is your recommendation that there be a mix?

Mr Clinton: My recommendation is that there be a mix, that we have a broad spectrum of resources available and that we use the existing abilities we have to assess people and ensure that they go into the right resources for them.

The Chair: You've got about a minute.

Mr Tilson: The previous people who came to us from St Leonard's House talked about special-needs people — I don't know where my notes are. Can you give us any indication as to what percentage of people in the system, as far as halfway houses are concerned around the province, fall into that category?

Mr Clinton: My understanding currently is we're talking about 15% special-needs clients in the province.

Mr Tilson: How much does that cost? There's got to be a rather unusual cost for those types of people.

Mr Clinton: There's a huge cost to it. They don't tend to respond very well to the existing systems; they get lost inside. The actual dollar figure, if you took 15% of the correctional budget, you'd get a picture of a group of people who don't really belong in the system. The correctional system has always been referred to as the bottom of the catch net. When they don't fit in anywhere else, they get arrested and turned over to the jail system to look after.

Mr Tilson: I guess that's the problem with whether we're talking halfway houses, electronic monitoring, all of the different many people who are in it, is what's the best way to attempt to rehabilitate people, the best

economical way to rehabilitate people, because you haven't got that long a period of time. You've got, I suppose — and I don't know; that's why I was hoping you could tell me — but my speculation is that you've got a minimum of 60 and on up to 180. That's not a great deal of time to try and rehabilitate people.

Mr Clinton: No, and in fact that's also a great question, because it points out the major flaw in our whole system. That is that we constantly fixate on the notion of rehabilitation, the very definition of which means to return them to the state from which they came, which is probably, when you think about it, the last thing that we want to be doing. Rehabilitation is a wonderful term if it's used in the health model, where a person is ill and you want to return them to their former state of wellness. Used in the application that we use it in corrections, rehabilitation is used basically in the model of driving the devil out of them, and it's a punitive model. We believe the correctional system will scare people into behaving and there's no research anywhere that will support it as being effective.

The model that we want to use is a model that addresses more the cause of problems. We are finding people are breaking the law and they have certain deficits, they have need for substance abuse treatment, they have cognitive deficits that cause them not to be able to problem-solve and strategize. We should forget for a minute our need for retribution, because unless retribution will get us an effective result, all we're doing is continually making a problem worse. We're bringing people into a system modelled after rehabilitation, dehumanizing them, then releasing them back into our communities and somehow thinking we're better off when in fact we've just made the problem worse and we've spent a lot of money doing it.

1630

Mr David Ramsay (Timiskaming): Thank you, Mr Clinton, for coming. I hope what you and the previous presenters have said today is maybe finally starting to get through to some of the government members. It seems to me, from the first two presentations today, what you're really saying is that we're turning back the clock when it comes to corrections. For the government to say that electronic monitoring can be a substitute for what you do and what we, collectively, have developed in transition support and housing for offenders over the last 50 years is absolutely ridiculous; it's comparing apples and oranges.

I, like most in the correctional field, am very interested in electronic monitoring, but not as a substitute for the work that you do. You stated a phrase, I think, that really sums it up: that what we should be building is a continuum of justice. I see electronic monitoring as a part of that. But I also see the halfway houses, the community resource centres, as that. If you really look at what electronic monitoring is, it's just a very fancy, modern, high-tech form of incarceration. It's only incarceration; it doesn't supply the offender with anything else.

You, in your work, supply offenders with a total support package that provides a little bit of supervision but much support. I think most people who have familiarity with the people on the other side of the correction

system understand it and, as you've stated today, need support; that it's not just punishing people that's going to bring them around, but it's having, first of all, some empathy for their problems, but also giving them some expertise in how to deal with those problems so they won't be acting out in an improper fashion. You've really crystallized that for us, and I hope that the government members see that what you're saying and what you're providing to the correctional system is very, very valuable.

The Chair: You were most efficient, Mr Clinton. I have a point of clarification. You talked about greater cooperation between the federal and the provincial. I take it you were referring only to halfway houses and not to institutions, where you'd have a mingling of those over two years and those under two years?

Mr Clinton: Well, the point of clarification being I'm not sure that I wanted to speak to the institutional side of it, although I do think I made reference to the fact that an arbitrary decision at two years doesn't really make a whole lot of sense and that if we're going to explore efficiencies, maybe we should put everything on the table and acknowledge the fact that there are administrative charges and bricks and mortar which are expensive and resources that are out there that could be piggybacked and dovetailed and made extremely efficient by getting together and working on this in a cooperative way.

The Chair: Thank you very much for your presentation; most valuable.

ONTARIO PROVINCIAL POLICE

The Chair: Our next presenter is Superintendent Chris Wyatt of the Ontario Provincial Police. Welcome, Superintendent. The procedure is that you have one half-hour, which includes all questions. So I'd ask you to proceed.

Mr Chris Wyatt: Thank you very much, sir. I propose just to make a few brief comments and then attempt to answer any questions that you may have. I believe you all have a document that I sent to the secretary of the committee.

I'm the commander of the OPP's Operational Policy and Support Bureau. In that role we are responsible for research, planning and policy development related to operational policing matters; for example, what procedure police officers should follow in death investigations. When we're requested to review and provide feedback on initiatives from one of our partners in the justice system, we try to stick to two basic criteria: How does it affect public safety, and what are the resource impacts?

In reviewing electronic monitoring, the program as it is in the correctional services division of the Ministry of the Solicitor General and Correctional Services, we use those two general criteria.

The OPP believes that with the guidelines and procedures currently used in the program, public safety is not adversely affected and may even be enhanced for the following reasons:

The criteria for selecting individuals — for non-violent offenders, for example, that there be a suitable living environment — we believe are sufficiently rigorous to provide a high level of confidence that high-risk offenders are not taken into the program.

We believe that the level of supervision is at least as great as or probably better than was the case in CRCs. In addition, there is supervision provided by ministry staff.

The technology has been tested over a wide period of time and in many jurisdictions and has been found to be more than adequate to the purpose.

There is immediate notification where an offender has not abided by the set schedule, and this enables ministry staff and the police, where required, to take action in a timely manner.

We believe that electronic monitoring better allows offenders to retain employment. One research study indicates a higher rate of employment retention of offenders on electronic monitoring over halfway houses.

With electronic monitoring, offenders are able to live with and maintain ties to those who have a stake in the program: those in their residence. This requirement to some degree removes the offender from a criminal milieu, which we believe is a significant contributing factor in recidivism.

As the program has only recently been introduced, there are very limited data to estimate the resource impacts on police, and in particular the OPP. However, given the rigorous selection requirements, we don't expect those resource impacts to exceed those expended when CRCs were being used.

We believe that electronic monitoring has the potential to evolve and yield even greater benefits in the following areas:

In the cases of domestic violence, EM could warn the victim of the presence of the perpetrator.

It could be enhanced to include an alcohol testing component. This would be a very effective method of supervision for those offenders who have a drinking problem.

It could be enhanced to include global positioning technology. This could be a very valuable investigative aid where an offender is a suspect in a crime.

The expansion of electronic monitoring to offenders on bail has the potential to reduce the resources, which are considerable, expended by police on prisoner transportation.

These are all my comments. I'd be pleased to answer any questions you may have.

Mr Tilson: Superintendent Wyatt, thank you for your presentation.

Tell us a little bit about halfway houses. In particular some of the concern that seems to come out is whether electronic monitoring is safe, and you've given some examples, that the issue of alcohol and the issue of domestic violence may alert that there are problems. Can you tell us a little bit about the converse, the issue of safety with respect to halfway houses and how much of a problem, if any, there has been?

Mr Wyatt: In our view, it really comes down to an issue of who's in the halfway houses, what criteria are used to determine who is in that halfway house. In terms of provincial offenders who are in the halfway houses, the OPP information is that we've had very little problem with that program. That doesn't speak to the federal program, of course, which has been a different experience.

Mr Tilson: Maybe that's my lack of knowledge. I've read of problems with halfway houses — quite the

contrary — that there have been problems with security and difficulties, but you're saying if there have been any, they've been with respect to federal houses as opposed to provincial houses?

Mr Wyatt: Yes, sir.

1640

Mr Tilson: The issue I'd like you to talk about is the concept, from your knowledge, of offenders being able to work and support their families. That has been outlined as a positive with respect to electronic monitoring. Can you elaborate on that?

Mr Wyatt: I don't have any quantitative data, but my colleagues and I feel that a person with a job has a stake in the community. In investigating criminal offences, we find one common denominator of criminality is that the person usually is unemployed or not permanently employed.

Mr Tilson: On the issue of cost, the figures put out by the ministry are obviously estimated costs: \$22 per diem per offender on electronic monitoring versus \$80 per diem per offender with respect to halfway houses. Do you have any thoughts as to how reliable those estimates are?

Mr Wyatt: I couldn't make any comment about those figures, really.

Mr Tilson: The reason I say that — they are just estimates, obviously, because they haven't happened, but there's the issue of savings that can be reallocated — you may have mentioned that — to deal with more serious offences and offenders who are at greater risk. I don't know whether you have any position on that.

Mr Wyatt: Certainly we'd like to see resources targeted towards the more serious offences, and if this initiative can do that, so much the better.

Mr Ed Doyle (Wentworth East): Thank you very much for appearing today. This question relates a little to what Mr Tilson asked you concerning employment. You had mentioned here that research studies indicate "a higher rate of employment retention of offenders on electronic monitoring as opposed to people in halfway houses." That interests me. Have you had much of a chance to find out any statistics in this regard?

Mr Wyatt: I haven't examined the statistical evidence. This is one research study that I'm referring to, and I believe the Deputy Solicitor General referred to that in her appearance before the committee. I'm not a big stats guy, so when I see these elaborate statistical models I have a hard time interpreting them, but I can generally follow the text.

Mr Doyle: I think that's important. If people can maintain employment better, this is the key to any program, actually.

Mr Wyatt: I think most police would totally agree with the statement that a job is essential to preventing criminality.

Mr Doyle: You've had a lot of discussion with your peers on this topic, I would imagine.

Mr Wyatt: Yes. We had a very heated discussion about the causes of criminality and what we as the police think is the major contributing cause. One thing I was able to distil out of this heated conversation was that employment is a key factor.

Mr Doyle: I would have to agree with that.

The Chair: Mr Parker, we have two more minutes, if you had any questions.

Mr John L. Parker (York East): Maybe that gives me the time I need to address this point. Did I understand you to indicate that you are satisfied that electronic monitoring does a satisfactory job of keeping track of offenders involved in the program?

Mr Wyatt: Yes.

Mr Parker: As good a job as a halfway house program would do?

Mr Wyatt: Yes.

Mr Parker: Let's just take it as a given that electronic monitoring is cheaper than a halfway house. I'm not asking you to comment on that, but let's just take the presumption that it is cheaper. Would you rather see the additional dollars go into improved programs for offenders or into building walls and roofs and bricks and mortar to house offenders?

Mr Wyatt: The choice is between bricks and mortar —

Mr Parker: What I'm getting at is, if we can assume that there's a saving to be achieved by keeping track of our offenders by electronic means rather than putting them behind walls, can you see some potential for those savings to be put to more effective use than to building walls and homes for offenders?

Mr Wyatt: This reminds me — if you'll pardon me for digressing — of being cross-examined by a crown attorney who was trying to get a yes or no answer out of me.

Mr Tilson: A judge probably wouldn't allow that question.

Mr Wyatt: I'm not sure I can say, because there are so many different factors involved, that I prefer this over that. What I want to see and what the police would want to see is what prevents criminal behaviour. If one works best, that's what we want to do.

Mr Parker: I'll put it this way: Is it the bricks and mortar that do an effective job of preventing criminal behaviour or are there other areas where the investment would be more effectively addressed?

Mr Wyatt: I can't give you a straightforward answer, sir. I'm sorry.

Ms Castrilli: Superintendent, thank you for coming. I must say I'm absolutely surprised by your presentation. You are, I believe, the first witness who has made these kinds of assertions. Everyone before you has indicated that while there is a place for electronic monitoring, it should be used as part of a continuum, as part of a whole series of measures in the criminal justice area. I just want to make sure I understood you correctly. Are you saying that electronic monitoring is a substitute for halfway houses?

Mr Wyatt: I don't purport to be an expert in correctional theory.

Ms Castrilli: Fair enough.

Mr Wyatt: When you ask, is one more effective than the other, I don't have a lot of background in that area to evaluate effectiveness. I came here today to talk about the merits of this particular program and not whether it could replace some other program. That's why I couldn't give Mr Parker a straightforward answer.

Ms Castrilli: That's very important, because your presentation leaves some doubt as to what you're saying with respect to other methods of surveillance.

Mr Wyatt: Other methods may be equally valid.

Ms Castrilli: Okay. That's very helpful to know. I know you're not an expert, but I assume you're speaking on behalf of the association and you therefore must have some contacts outside. Are you aware of any jurisdiction where electronic monitoring is used exclusively?

Mr Wyatt: No, I'm not aware of where it's used exclusively.

Ms Castrilli: Would it surprise you to know that our evidence is that there aren't any, that wherever there is electronic monitoring, other measures are also used? We had testimony last week from the state of Florida which indicated that a substantial number of people on electronic monitoring had their programs terminated because they violated electronic monitoring. I wonder if you might comment on that in light of your assertion that this is an effective method. Other jurisdictions aren't so sure.

Mr Wyatt: Are you speaking from a policing perspective?

Ms Castrilli: I'm talking simply from a statistics perspective.

Mr Wyatt: From a public safety perspective I don't know. From a policing perspective, there's a device that's checking every three seconds that in our view is superior to somebody doing a visual once every who knows how often. In our view, the electronic device doing the checking over some person doing the checking in a CRC has got to be superior.

Ms Castrilli: Remember that in jurisdictions such as Florida there are obviously some difficulties, because even with this fail-proof mechanism there were people taken off the program and taken to jail because they violated it. It's not as effective as it would appear, and we had evidence from a whole series of coalitions, community organizations, that do not believe, as you do, that there are studies that speak to the effectiveness of electronic monitoring; it's inconclusive as yet what the data will show. The gentleman from Florida also told us that it's still too early to say how effective this will be.

Mr Wyatt: Is that because there were problems with it?

Mr Tilson: He didn't say that.

Ms Castrilli: Sure he did. I think if you check Hansard, it's exactly what he said: "The data are too recent and I can't comment."

Mr Wyatt: I would say, just from our perspective, that the technology appears to have a higher degree of reliability than human observation. In that sense, when the individual is supposed to be at his residence or the CRC, that level of supervision is higher using electronic monitoring than it is with correctional staff.

1650

Ms Castrilli: Your position is that to the extent you have to monitor individuals, this is one way you would want to see in place, and you express no opinion on halfway houses or on the purposes they might have, such as rehabilitation, such as facilitating entry into society and that sort of thing?

Mr Wyatt: No, I make no judgement as to one being superior to the other.

Ms Castrilli: Terrific. Thank you very much.

The Chair: Superintendent, Mr Parker, the first to cross-examine you, is a lawyer, and Ms Castrilli is also an able lawyer, so you must feel right at home.

Mr Wyatt: I feel like my whole career has been like that, sir.

Ms Castrilli: If I may say, I wasn't trying to cross-examine you, Superintendent. I was just trying to understand what it is that you were telling us.

The Chair: Mrs Boyd, who is next, is not a lawyer; however, she is the former Attorney General of Ontario.

Mr Wyatt: We've met before.

Mrs Boyd: We've worked together before, for sure.

I'm really interested. It seems to me that what you say about risk control issues, which is obviously your primary concern here, is quite true. I think all of us were impressed by the risk management tool that the ministry is trying to use and the way they're trying to do that. I don't think, as long as those criteria are in place and that tool is used appropriately, I have as much concern about risk control in terms of using electronic monitoring.

What I do worry about is that I think we want to do more than just control the risk. We want to reduce the risk. One of the real issues with electronic monitoring is whether it is a tool that's going to allow us to reduce that risk and help people to become more connected into the community.

I would agree with you that being employed is an important factor of being connected into the community and that having that as one of the criteria, that someone has a job to go to, something that gives some structure and shape to their lives, is a really important part of helping that risk reduction for them. But it may not be very realistic for a lot of people, even in the provincial system. It certainly wouldn't be realistic for a lot of people in the federal system, because they would have been out of society for long enough that getting them a job even when they come out on mandatory supervision is often an extraordinarily difficult task.

I'm kind of curious. You said in answer to Mr Tilson's question that as far as you knew, the OPP had not had any real difficulty with provincial halfway houses. That certainly is my sense, that all the celebrated cases of risk have been either the federal situation or young offenders' closed facilities, which is the other area. Is that your understanding? I live in a town that had lots of these, and I don't remember any.

Mr Wyatt: That's our experience.

Mrs Boyd: So when you say they may get better supervision through EM than through a halfway house, you're talking strictly about knowing where they are. Obviously, you don't know what they're doing, but you do know where they are, and there are those celebrated cases where people deal drugs and beat up their wives and all sorts of things, even though they're where they're supposed to be when they're supposed to be. That's a different kind of risk, isn't it?

Mr Wyatt: Yes.

Mrs Boyd: On your second page, you talk about how this could be enhanced. On the alcohol testing compo-

ment, they do that in BC; they have the hand-held breathalyser and they do that. We saw demonstrated to us equipment that would do that through voice-activated blowing right onsite and so on. I agree with you: I think that's a necessary enhancement, because we know how often alcohol is a risk factor in those things.

But in terms of your number 1, where you talk about domestic violence, we've been around this one in terms of the early warning things and trying to protect people. The real problem here is that the police still have to be able to get there in time, and the range of these devices is not very big at this point in time, so I expect you're really looking at a future enhancement on that?

Mr Wyatt: Yes. It would be nice that in these cases of domestic violence the alarm would go off if the offender came within three miles; that would give the police the opportunity for response.

Mrs Boyd: But it's usually 300 yards, isn't it?

Mr Wyatt: Yes, and of course in an OPP area, it's a very low-density type of population and sometimes it takes us an hour to get to a call.

Mrs Boyd: I know, and that's what caused us the trouble in the celebrated case in Elgin county, isn't it? It really was that kind of problem, that by the time you get the warning, the response time is a difficulty.

When you talk about expansion in terms of global positioning and in terms of the bail issue, these are not things, I gather, that are being looked at now. Would you expect there to be a lot of objection to the positioning technology in terms of violating people's human rights?

Mr Wyatt: We would expect there would be a charter argument against that as being unduly intrusive.

Mrs Boyd: Most of your surveillance things face that challenge, don't they?

Mr Wyatt: Yes. There are a lot of things that police like that other people see as unduly intrusive.

Mrs Boyd: I can't understand that.

Mr Wyatt: I can't understand it either. If I understand this, it's a voluntary program?

Mrs Boyd: Yes.

Mr Wyatt: That may be a remedy in that area.

Mrs Boyd: That may be the way around it, or it may be that if the signal isn't beeping, it switches, because there's an automatic offence at that point. There may be ways around that.

On the bail thing, as C-41 comes in and there's more release by police officers onsite and so on, I wouldn't think you would see this as a function of that; I would think you would see this as a function of releases only through a justice of the peace with conditions. Or would you see it being done at the station in terms of conditional releases by police?

Mr Wyatt: No. We would see that condition being put on by a judge or a JP.

Mrs Boyd: So a very specific kind of a condition to ensure that everything was looked at at the same time.

Mr Wyatt: We would want a judicial review.

Mrs Boyd: In summary, just to be really clear, you're saying you think electronic monitoring is going to help you in your job for a certain number of clients who fit into that particular category that's there in terms of risk assessment and that you could see it being enhanced

down the line to further improve that, but you really can't see it being something that would be available to people who, for example, have committed murder or have committed sexual assaults, that sort of thing?

Mr Wyatt: Yes, we agree.

Mrs Boyd: I think they did in Florida too, but have a surprising number of people in those categories as a result of early resolution.

Mr Wyatt: A person appeared before this committee, Mr Cairns, from British Columbia, who I thought was very wise when he advocated a cautious approach. We would tend to agree with that.

Mrs Boyd: That's what the police would like?

Mr Wyatt: Yes.

Mrs Boyd: Just one last clarification: You're not representing the association here today, are you? You're representing the commander.

Mr Wyatt: I'm representing the commissioner today.

The Chair: Superintendent Wyatt, thank you for attending and sharing your expertise with us today.

AMERICAN PROBATION AND PAROLE ASSOCIATION

The Chair: Our next presenter is Mr Don Evans on behalf of the American Probation and Parole Association.

Just before Mr Evans starts, you should have received approximately 14 pages, the conclusions of the University of Maryland thesis referred to by the deputy minister. We do have all 160 pages; if anyone wishes them, please do not hesitate to ask the clerk.

Mrs Boyd: Could we borrow it, Mr Chair, rather than having the cost of duplication? That would probably be our best bet, wouldn't it?

The Chair: Fine. Excuse me, Mr Evans.

Mr Donald Evans: No problem. Thank you for the opportunity of appearing before you on the matter you have before your committee. In the interests of time, I intend to go through the first couple of pages of my presentation rather quickly. You can read that at your leisure, summarizing the association I represent.

I'd like to draw your attention to our position that we think there are some basic principles for effective community programs that ought to be adhered to, and I'll just refer to those in the bold points.

Crime is a community problem. Informal social controls are the most effective method of reducing crime. Community involvement should be encouraged to the maximum extent possible. Networking and collaboration are necessary to significantly impact crime and maximize agency operations.

Therefore, the first comment I would make about the decision to close halfway houses and substitute electronic monitoring is related to the need to develop effective community networks for offenders. The possible loss of community agency support, through their boards and volunteers etc, may be the more significant loss to community corrections in Ontario. The American Probation and Parole Association notes that in almost every jurisdiction in the United States, correctional agencies are seeking ways to enlarge community support and in this manner increase their operational capacity.

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Second, in the United States there is a shift in the use of residential programs. The trend is towards more structured programming for offenders under community supervision and includes probation detention, restitution centres, and attendance or day reporting centres, that is, halfway-in programs. There has also been a move to develop what I refer to as halfway-back residential services for offenders committing technical violations of probation and parole. There is a decline in the use of community residential facilities for early release from prison programs.

Third, the capacity of a correctional system to adequately assess and classify its offender population is crucial to the effective use of correctional resources. As you will have already noted from the current ministry, its use of the LSI-OR is consistent with this trend to identify risk levels of offenders as well as the factors that, if addressed, would lower the risk level and thus provide for enhanced public safety. It should also be noted that the research in this area is consistent in demonstrating that resources are best used with offenders at higher risk levels than many who are now under community supervision. The research also shows that you get an opposite effect if you provide intensive services to lower-risk populations; that is, you actually increase the risk of reoffending. More correctional agencies are beginning to take note of this research and design their interventions accordingly.

Fourth, with regard to electronic monitoring, earlier research results were unclear about the effectiveness of electronic home confinement in reducing reoffending. Most of the studies suggested that offenders on electronic home confinement fared no worse than those serving other community sanctions.

Reoffending rates were improved when electronic monitoring was combined with other program interventions, for example, drug treatment for substance abuse offenders. There is evidence that electronic monitoring became more effective when combined with other rehabilitative programs. A recent ruling by the New York State Court of Appeals stated that conditions of probation such as electronic monitoring must be "fundamentally rehabilitative." The court found that electronic monitoring could only be used to advance the offender's rehabilitation.

Most jurisdictions look to electronic monitoring as a means to reduce costs, and if used appropriately it can be cost-effective. However, using electronic monitoring with low-risk offenders who could do as well on parole or other release programs undermines its ability to save money and leads to overprovision of services, thus eventually increasing costs. Also, as I noted earlier, providing intensive services such as electronic monitoring to low-risk offenders has been found to increase recidivism rates, further increasing costs. Electronic monitoring is cost-effective when used on moderate- and high-risk offenders and coupled with appropriate correctional interventions that target specific criminogenic factors.

Correctional administrators often speak of prison beds as finite resources and argue that they should be used for those who need them most. If the justice system were a capitalist economy, the supply of offender placements

would adjust to the changing demand, shortages would be short-lived, and competition would create innovation and cost efficiency. But of course the criminal justice system is not a capitalist economy. It is a loosely interconnected system of bureaucracies with responsibilities purposely divided between independent levels and departments of government.

Using the metaphor of a capitalist economy to help describe our system of offender placements has its limitations. On the other hand, it does provide some insight. For example, offenders are in one sense the consumers of the supply of offender placements, but they are not the purchasers. The purchase decision, the decisions about which offenders go to which placements, are made by police officers, crowns, judges. If those responsible for placement purchases were real consumers, they would make their choices and pay real money, but this is not the case. The placements do cost real money, but to the purchasers they usually are free. As in all situations where the decision to consume is divorced from its cost consequences, purchasers make decisions for reasons other than cost.

On the supply side, providers of offender placements often display attributes of centrally planned economies, including risk aversion, adherence to tradition, limited knowledge of consumer needs and motivations unrelated to cost or quality.

The challenge to government is to devise ways to allocate scarce resources in a way that is economical and that meets the objectives we as a society set for our system of offender placements. To accomplish this, it will be necessary to balance short-term and long-term objectives. In the short term, police officers, crowns and judges are concerned about the safety of the community and about other issues relating to how the criminal justice system works. In the long term, the primary objective for our system of offender placements should be to help make our society safer and find ways of reducing reoffending.

To accomplish these aims, it must be recognized that there are things that offender placements can do, things that they could do better and things that they cannot do. Recognition of what it is we are trying to accomplish and what it is that can be accomplished with offender placements is the foundation upon which a rational use of offender placements can be built.

In conclusion, I would like to remind the committee that there tend to be two approaches to the current crisis of crowding and limited resources in our correctional systems. The first approach adopts a population management strategy and seeks to find ways to return offenders to the community as quickly and as cheaply as possible. It focuses on offering only supervision strategies and stresses compliance. It works on the short term but does little to reduce reoffending and thus fails to impact adequately longer-term costs. In other words, it leads only to risk-control strategies.

The second approach adopts an offender management strategy that seeks to restore the offender to the community. It focuses on supervision combined with rehabilitation programs that aim to reduce reoffending, thus impacting longer-term costs to the whole criminal justice system, or,

if you like, a risk-reduction strategy. The American Probation and Parole Association is finding that this latter approach is showing promise and that it is also more likely to be effective when done in partnership with local community agencies.

Improving the correctional system is a developmental process; any change must be designed to facilitate future reforms that will necessarily follow. If we are to improve our odds, we need to simultaneously provide for lifestyle interventions, satisfy retributive concerns and provide for effective monitoring of offenders in community settings. This would be possible in Ontario through the appropriate use of electronic monitoring and treatment interventions done in partnership with community agencies.

The Chair: Thank you very much. We have approximately eight minutes. Ms Castrilli.

Ms Castrilli: Mr Evans, you made a number of very striking points which I wonder if you might elaborate on for me. The first is that most of the studies you've seen suggest that offenders on electronic monitoring "fared no worse than those serving...community sanctions." I wonder if you might tell us a little more about that.

Mr Evans: There are two things that go to that; one is that there's a tendency to use it for fairly low-risk offender categories, so in a sense you have targeted the wrong group and you're wasting your money. They could do just as well on an unescorted temporary absence, let out earlier, just as well on parole or just as well being on probation and never in jail in the first place.

Ms Castrilli: So you don't think there is any evidence that those community sanctions would be violated. Is that what you're saying?

Mr Evans: Yes.

Ms Castrilli: Okay. I'm also interested in the New York case. I find that fascinating because I guess we're looking at electronic monitoring as something separate from rehabilitation. That seems to be the gist of this. Yet, if I understand this correctly, electronic monitoring is almost defined by the court as another means of rehabilitation because it has to be coupled with rehabilitation for it to work. Is that right?

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Mr Evans: Yes. In other words, if it doesn't lead to something being done for the individual that would aid him in his rehabilitation, then the court is unhappy with it.

Ms Castrilli: Is it unconstitutional?

Mr Evans: No, because this was a New York ruling. It hasn't been tested any further yet. It just came out in April.

Ms Castrilli: Was the electronic monitoring vacated as a result?

Mr Evans: I think what happened in New York state is that they're attempting now to add other program elements.

Ms Castrilli: Did the court give any indication as to how that might be implemented?

Mr Evans: Yes, adding drug treatment if it's a drug case; adding life skills, employment development programs if employment was a factor in their being in trouble; education if that was a problem. There are a number of ways that they would go at it.

Ms Castrilli: So in and of itself, electronic monitoring should not stand.

Mr Evans: Yes.

Ms Castrilli: Unless it's for those very low-risk offenders where it would make no difference.

Mr Evans: The argument is, why put low-risk offenders on it?

Ms Castrilli: Exactly. You also talk about citizen participation in your paper. I wonder if you might comment on what you mean by that specifically.

Mr Evans: I mean that there should be far more involvement of the local neighbourhoods, community groups, everything involved in helping restore people to the community. I think the danger is that all correctional systems have sort of divorced themselves from communities and have not found ways to work with communities in helping people understand and doing general fear reduction strategies with them.

I think it would be very helpful if there was far more involvement of community groups. The state has taken upon itself a lot of responsibility it cannot deliver.

Ms Castrilli: Just following that for a minute, do you think that electronic monitoring might give communities a false sense of security that something is being done somewhere?

Mr Evans: Putting people in prison for a long time is giving them a false sense of security, given the recidivism rates of people coming out of prison. It could. I think that's why public education would be an absolutely important thing to do, because unless you're doing something with that offender that helps to attach him to that community, simply returning him to the community and knowing whether he's there or not there is not a terribly insightful thing to do.

Ms Castrilli: Would your conclusion be, on the basis of what you've said here, that electronic monitoring, unless exercised in conjunction with other measures, might in fact lead to longer-term costs for society, and what might those be?

Mr Evans: I think the reoffending rates won't necessarily change, so you've constantly got the person coming back. You're not doing anything to intervene in their lifestyle that changes them or turns them around. Simple incapacitation only works while you're incapacitated. It has a very small percentage. The best research indicates that most of our sanctioning processes have no deterrent effect. Once we get the fact that any kind of just punishment notions have only marginal responses, the sooner we can turn to doing something serious about the problem, and that cannot be done unless we involve communities.

Mrs Boyd: Thank you, Don, for sharing with us still your expertise. It's good to see you, and I thank you for participating in this.

One of the things you say in your brief that interested me was that you think actually sometimes putting very low-risk offenders in a situation of supervision in a CRC kind of setting could in fact be worse. Could you explain that a little bit? I think I know what you mean, but I'd be interested in hearing.

Mr Evans: These are persons who are very low risk to reoffend in terms of their behaviour and/or of their

needs, because we know so little about what it means to give somebody permission to be slightly free and what this might psychologically do to people as they lose a certain amount of self-determination.

We have found that generally speaking, because the rules and standards we've set for the administering of all these programs slowly become somewhat inflexible, you tend to get someone who you would really worry about being 10, 15, 20 minutes late on curfew as being problematic slowly building a record because his own offence categories and what he did to get him in trouble aren't all that serious and it's hard for him to equate the amount of supervision and surveillance you're giving him over against what he did. The technical violation rights begin to build, and the more people get introduced into the criminal justice system, unfortunately, the longer they stay with us.

Mrs Boyd: I'd like to just emphasize what you say. I have watched that happen in a facility in our area where a provincial judge believed that was where people ought to be. In fact, under any other circumstances they would have been released into the community without supervision. I watched exactly that happen. So that's the other side of that inappropriate placement that has been rather difficult. When people in the field talk about inappropriate placement in our provincial system, they're mostly talking about too much supervision for the particular case, aren't they?

Mr Evans: Yes.

Mrs Boyd: I'm very interested in your challenge that government needs to look at the way to deal with the continuum of the system, and you and I have talked about this before, that unless there is some stake for judges and for prosecutors, and indeed for defence lawyers increasingly as we come to early resolution in this whole thing, then we're in difficulty, aren't we? And you're right, they are like a purchaser who has no stake.

Mr Evans: It's unfortunate that the debate here is about the closing of halfway houses and the introduction of electronic monitoring for, what?, less than 1% of the total provincial offender population. In terms of a placement strategy, there are so many other things that need to be done.

I'd be much more concerned as a public citizen as to what's happening with the 85% to 87% of people under supervision in the environment now and what's happening to them, what kind of program interventions are happening there. How well is the utilization of the assessment instrument there detecting risks and what are we doing about risk reduction strategies?

I'd be much more interested in ways of deflecting people from the criminal justice system so that scarce resources are used for those people that I know full well we can only incapacitate and keep away for very long periods of time, instead of being all bunched up with a lot of mid-range people who make it difficult for us.

The American system is very instructive this way. They are going to use very expensive services and resources for large numbers of people who are not particularly problematic and find themselves having to release people who didn't have mandatory sentences, pushing them out the back end to make room for people

who are a lesser risk than the people than the people they are releasing. I would like to see that avoided in this province, in this country.

Mrs Boyd: That's what we heard from them in Florida.

One of the suggestions was that the LSI be used before sentencing so that you knew what the risk factor was ahead of time. I gather there is a part of it that could be used for a pre-sentence report, but they aren't always done, are they?

Mr Evans: No. There are not always pre-sentence reports done, so that's another problem.

Mrs Boyd: That's right, but if we're really going to upfront this system, it would seem that we'd do the risk assessment there so that we don't widen the net, which is a real concern.

Mr Evans: Yes.

Mrs Boyd: Just a last thing: You're talking about community involvement, and I couldn't agree with you more. I think the more we tuck people away and pretend they are not our problem, the harder it is for us to accept that they are going to come out of prison, that they are going to be back in the community and that we have some responsibility to give them some tie to the community when they come out. That's been a big problem with the growth in this sort of mentality that there's more crime and it's worse, and the only we can solve it is to put people away for a longer period of time. Particularly in the provincial end of the system, it seems to me it has really boomeranged on us in a way that's really quite uncomfortable, isn't it?

Mr Evans: In some respects it's probably the misfortune of our own early successes.

Mrs Boyd: Yes. The last thing I wanted to ask you: It's not just having jobs that ties people and helps to predict some of the success for some of these folks, but also having some structure in their lives, a very set schedule, because that really is a problem for a large proportion of the offender population. They've never had structure in their lives, so learning to follow structure is really quite a difficult kind of situation.

I guess I worry about the number of technical violations that I see in the statistics from BC and from Florida around whether we might not be laying up for ourselves the same problem that you talked about in the CRCs. I'm not sure how much leeway is expected. We heard the police officers saying, "We know within that three-second period that somebody isn't where they're supposed to be." It seems to me that most of us don't keep our time quite that carefully.

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Mr Evans: I think the Chairman's had that problem with committee members. The difficulty is that when you're trying to get a handle on these kinds of things, you begin to really be very specific about who you're talking about, which offender groups, who you're targeting, what types of needs and programs are required for them.

The bottom line is that overprovision of services to people who don't need them causes you problems. It would be like giving people doses of a prescription drug they didn't need. It would be harmful, and so the same

kind of problem, whereas for someone who really needs it, it's not harmful; it reduces the particular problem they have, and that's the kind of thing you need.

People need to have a stake in conformity or they wander aimlessly. So whatever you can do to give people a stake in conformity, which in the normal structure is family or relationship networks, employment, which is aided by the better level of education you've got, so anything that keeps people in school who don't have good schooling — all of those things help, which means the problem of crime reduction is not limited to the criminal justice system. It begins to broaden its base; hence the need for that broader community involvement as well as other agencies'.

Mrs Boyd: Thank you very much.

Mr Tilson: I'd like to ask another question with respect to this comment you've been dealing with in respect to the issue of overservicing, which was your third opportunity for successful offender reintegration, I think is how you describe it. Are you telling us that with the community resource centres or the halfway houses there is more likely to be overservicing?

Mr Evans: No. I'd say there's more likely to be overservicing in the total criminal justice system if it doesn't do a really good job of differentiating between who needs the service and who doesn't. So it could happen in your prison system —

Mr Tilson: It could happen in either one.

Mr Evans: It could happen in your prison system, it could happen in your probation system, it could happen in your CRCs, it can happen in the electronic monitoring system.

Mr Tilson: How are some of the other jurisdictions dealing with that?

Mr Evans: It goes back to the two approaches. If they've decided only to deal with risk control and take the short term, all they're doing is their surveillance models and not worrying about it. And you will find jurisdictions in the United States where they take that case that have growth in their populations, and if you look at their admission rates to prison, they are for mostly technical violations. In some jurisdictions, over 50% of new admissions to their prison system have to do with people who have violated — technical violations, not new offences — existing sanctions that are put in place. You will find this especially in jurisdictions that have put heavy user fees in, so people are being sent to prison for failure to pay.

Mr Tilson: We've heard from representatives from Florida and we've heard from representatives from British Columbia. The system we're using in Ontario is a back end system. In other words, people in the administration of jails, I suppose, decide who goes on and who doesn't go on. The issue in Florida is the front end, as I understand it. I don't know whether they've got both or not, but it seems, hearing the comments made last week or two weeks ago, it had to do with the courts ruling whether someone is to go on to electronic monitoring. I got the impression there seemed to be more problems with that, that the courts perhaps didn't have the expertise or the availability of information to determine who should go on it and who shouldn't go on it.

Are you in a position to tell us what your observations are around the United States as to which is better or which is more appropriate, the front end or the back end system?

Mr Evans: Like any program or strategy or new law, the amount of education and instruction that is given to the actors within the criminal justice system is usually woefully inadequate. Even in this province, when we introduced community service orders, it was supposed to be an alternative to incarceration. Within a very short period of time, over 12,000 people — I don't know what the figures are today — were serving CSOs as an addition to probation, when we never had that many beds anyway. So if those were true alternatives to incarceration, we really were in trouble, and yet if they violated, there was a greater tendency for the judge then to be really ticked off and send them to jail.

This is what I mean by, if we're not careful — and in the front end stuff with the electronic monitoring in the United States, there is that danger. But where good presentence reports are done, where time has been allotted by the probation officer who does that, looks at the individual and does a kind of assessment of them and makes the recommendation that this would be a suitable candidate for electronic monitoring, you make the problem less likely.

Where it's a wide-open game, you're into that matter I alluded to, that the purchasers of your services are not the same as your consumers. They see, "Here's a free thing. This looks good. This will satisfy the community because it looks like we're being tougher," without asking the question of whether you needed to be tougher.

Mr Tilson: I must say the general tone seemed to be that they were having problems over that, particularly with deals with the crown with respect to sentencing, and that it may be inappropriate for people to go on to electronic monitoring but because some arrangement was made for a plea or something like that —

Mr Evans: Exactly. It becomes inappropriate.

Mr Tilson: I think the comment was made — in fact, it was made by the individual, which may get to the real crunch of the issue — that not everyone can be incarcerated. We have a whole slew of crimes, from the very serious to the not so serious, and how far do we go in incarcerating people? You get stuck in the dilemma that, well, you know, there's a slight penalty, not to be able to go home, but on the other hand you're not coming into communication with other criminals. You're able to go out and get a job. Your family may be on social assistance, and if you can get a job, that other aspect of it isn't strained. I guess all of these things have been canvassed by different jurisdictions across North America.

I guess my final question, because I know other members of the government side have questions, is, do you feel that electronic monitoring is considered to be a success in the United States, notwithstanding some of the criticisms I've read to the committee in the past? Apparently there was a study done by the US National Institute of Corrections that said electronic monitoring is in a shambles and requires a full examination to measure its impact on crime rates. I don't even know who that is. Notwithstanding that, can you tell us what your observa-

tions are as to electronic monitoring throughout the United States?

Mr Evans: I may need to declare one of those conflicts of interest, since I've done some work with the US Department of Justice. But on the probation side of it, there's probably less than 30,000 people on electronic monitoring across the United States. If you look at their total number of people who are released, that's very small.

If I look at the state of Washington, which is mostly back end as a correctional option, they have roughly 400 people at both state and local levels, because they have a county system as well as a state system, on electronic monitoring, and they would have twice the number of people incarcerated at the prison at the state level and many more in the jail system than we do in Ontario.

So the number of people who are actually using it is relatively small, and so it's an infancy thing. It's a thing that, if you're in at a certain level, you should be able to begin to shape it appropriately. I think that in Ontario, the approach to use it at the back end, where they have some control about who gets it, is more promising till you test it out than if we had turned it loose on judges. I think in that sense that's a better strategy in terms of implementation.

They have an opportunity, if they have the money, to do reasonable research on it over a period of time and not

get hung up about, "We have to show results within six months or a year," but be reasonable about good time periods for decent research, at the same time monitoring and researching the people you're able to let go on either parole or other forms of temporary absence without the electronic monitoring who have similar or approximate risk levels. Then we could find out. We might then find out we could do away with a lot of our prisons in Ontario if this was the case, which would be a remarkable saving. So there is an opportunity to do really sensible research about this program area if people want to get serious about it.

The difficulty in cost-cutting times is that people just look for a strategy they can use now, and whether it's in the business world or in government, it's the same.

The Chair: Thank you, Mr Evans, for your attendance today.

This committee shall not meet tomorrow. The next meeting is on Monday, May 13, at 3:30 pm. You will all be receiving the summary of evidence and presentations to date no later than Thursday so you can review it this weekend. We only have one and a half hours to write our report on Monday, so if you could do your homework, it would be advisable.

We are adjourning till next Monday.

The committee adjourned at 1731.

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**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

Electronic monitoring

Surveillance électronique



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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Tuesday 14 May 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mardi 14 mai 1996

The committee met at 1540 in room 228.

ELECTRONIC MONITORING

Consideration of the designated matter pursuant to standing order 125, relating to the impact of halfway house closures and the introduction of electronic monitoring.

The Chair (Mr Gerry Martiniuk): I call the meeting of the justice committee to order. I see a quorum. Mr Ramsay came in while I wasn't watching and we seem to be ready to proceed.

Mr David Ramsay (Timiskaming): Are you putting that on the record, I sneaked in to the committee?

CANADIAN CRIMINAL JUSTICE ASSOCIATION

The Chair: Mr Sandhu is our first presenter on behalf of the Canadian Criminal Justice Association. You should have received a brief — you should each have it — with a rather attractive chart attached. If you'd proceed, sir.

Mr Ken Sandhu: I'm going to sort of go through the paper that you have before you very quickly in parts because obviously if I read the whole thing, we would not be able to get through all of it.

I'm going to just simply make mention of the fact that the Canadian Criminal Justice Association or CCJA has a very unique feature that in every province there is an affiliate. The affiliate in Ontario is the Ontario Association of Corrections and Criminology.

This particular affiliate was one of the associations that formed a coalition for purposes of providing you with a submission. I believe they appeared before you on Tuesday, April 30. CCJA supports their position, specifically their offer to work with the Ministry of the Solicitor General and Correctional Services to look at practical solutions to utilizing community correctional residences or community correctional beds in the future.

Having said this, I'm going to make a disclaimer. CCJA has a very practical policy in place to ensure that its final position on any issue will be reviewed and approved by its executive members. The executive members are literally spread out between Vancouver and Halifax.

Given the fact that I was added to the agenda later than some other groups, I have not been able to consult with my colleagues. Therefore, what you are going to hear from me today are the observations of a person who grew up in Ontario's correctional system with 25 years of service, and not the official position of the CCJA.

I'm going to skip through the next page and a half by simply saying that I've tried to capture for you the

historical perspective as I saw it. CRCs were started in the mid-1970s primarily to allow inmates to pursue educational and employment opportunities. I know you have been given a great deal of information about the background, and it seems to me that the program worked fine, there were a number of increases in terms of the new houses. It wasn't always easy because you all know how difficult it is to start a community correctional facility in the community when nobody wants it. It's a lot like the dump issue. In any case, we were successful in having several of these in place.

Another very important development that took place, in my view, was in the mid-1980s when some of the workers unionized and there was a great deal of pressure to bring the salaries in line with some sort of required standard.

In addition to that, there were offender programs, such as life skills and what have you, treatment programs, that were added to these residences. This caused the per diem rates to go from something like \$22.45 in 1980 to \$80 or thereabouts in 1990. Mind you, during this period the correctional workers' salaries increased as well.

So the notion of subsidized housing became a little more obvious when you realized that the costs had gone up. People who were supposed to be out for purposes of employment or education and, as a result of recession and downturn in economy, were in fact not employed all that well — and above all, that the correctional system had empty beds and could absorb the 300 inmates overnight and did so.

This brings me to a larger issue of conditional release. It seems that there was a need to look at all of this in the context of conditional release in the province. Conditional release is simply release from imprisonment under some conditions and there are presently two conditional release mechanisms in Ontario: the temporary absence program and parole.

The TA program was originally intended to allow correctional authorities to grant offenders temporary absence from prison, as I explained, for purposes of employment, education, hospitalization etc. There were some very fine programs that were carried out under this. Inmates were used to provide services during emergencies caused by floods and tornadoes. The inmates on TA — I don't know if you know this or not — were involved in setting up and later dismantling the physical structures that were necessary for the Pope's visit in 1984.

The problem in part that I observed was that TA, which was originally meant to be just a temporary absence, became more than temporary absence when it was used in the context of CRCs. It was more like a day parole or a pre-release program. Now generally, shorter-

sentenced and presumably lower-risk cases went to CRCs, whereas the longer-sentenced, high-risk cases came to the Ontario Board of Parole for consideration of full parole and the parole board generally did not have access to CRC beds because these were considered to be institutional beds.

There was also duplication in terms of the TA process and the parole process. These things started to cause problems and certainly there was a desire to look at the overall conditional release strategy, but it seems as though we never really got down to it.

The province of Quebec did do that and, after a considerable amount of soul-searching, settled on a system which currently consists of no inmate serving less than six months is eligible for parole, and no inmate serving a sentence of more than six months can be considered for TA except for the initial portion of the six months. In fact, this allows them to place some people in their CRCs to judge their ability to operate in a community residence prior to consideration by parole. The Quebec board of parole hears all appeals including those in the TA cases. The movement from CRC to parole represents a continuum of correctional supervision in Quebec as opposed to a competition, which sometimes it seemed to do in Ontario.

I'll just give you a very quick thumbnail sketch of the conditional release numbers in Ontario. The Ontario prison system generally holds about 7,500 to 8,000 incarcerates. The average number of persons on remand are 3,000 on any given day and 4,500 sentenced inmates. This would include about 300 to 350 CRC residents on the TA program when it was operational.

The Ontario Board of Parole, on average, would have between 1,400 and 1,500 parolees in the community on any given day. During the peak in 1993, there were more than 1,900 parolees, although the present number has dropped to about 1,000. Over 25% of provincially sentenced offenders, mostly serving a sentence of more than six months, are on full parole. On the day the CRCs were closed, there was a total of 10 parolees in CRCs and eight of them were at the Egerton House in London, which was a specialized facility for parolees. This gives you an idea of the relative population size.

1550

I'm quickly going to go over some of the recommendations or suggestions, and I make this sort of quantum leap from what I have indicated up to this point to my recommendations on the fact that you have been given a lot of information, from what I can tell, and so if it might seem a little spastic, please forgive me, I'm simply relying on the fact that you have the information.

My first recommendation would be that alternative secure settings be explored for persons on remand, such as through electronic monitoring or in a community residence. There are around 3,000 persons on remand on any given day and they're all in costly supermaximum jails or detention centres.

I understand that there may be a need to study this group a little bit better. Because of the fact that they have been on remand, they are not very well understood, let's say, or we don't know enough about them.

My second recommendation is that corrections discuss with its community corrections partners the possibility of using some beds for those inmates who do not qualify for electronic monitoring, but can be supervised in a community residence in high demand areas. I understand that some attempts are being made already to call together the stakeholders in the very near future.

Thirdly, I suggest that a single conditional release authority could serve the province well in determining who is appropriate for release and to what program. There are certain basic requirements that should be met. A conditional release program must work very closely with the correctional system because the correctional system is the essential lifeline for information, assessment and supervision. Such an authority must maintain very close links with other components of the system, such as police, crowns and judiciary. The judiciary is singularly most important to the success and failure of a conditional release program, closely followed by the crowns and police. While judicial independence is paramount and must never be compromised, it wouldn't hurt to ask them what they think of electronic monitoring and community resource centres.

This point leads me to my final recommendation, that ultimately I am in favour of giving the judges as many sentencing options as possible. It is in regard to this that I refer to the chart, Mr Chairman, that you mentioned at the start of the meeting, which is a chart showing "Escalating Punishments to Fit the Crime" and it's been taken out of a booklet entitled *Seeking Justice, Crime and Punishment in America*. It lists the sanctions that are workable in Ontario, including boot camp or a strict discipline facility.

I think the statement at the bottom of the chart is a very powerful statement that's worth repeating here, "An expanded range of sentencing options gives judges greater latitude to exercise discretion in selecting punishments that more closely fit the circumstances of the crime and the offender. The approach treats prisons as the backstop, rather than the backbone, of the corrections system."

My final comment is that I believe adopting a model of expanded range of sentencing options and a consolidated system of conditional release will allow you to get tough with the tough guy.

Thank you for the opportunity to share my views.

Mr Ramsay: Nice to see you again and welcome to the committee. First of all, just on the chart, that might be an appropriate title for our report to the Legislature. I like that: "Escalating Punishments to Fit the Crime." I think that's what a lot of the people have been saying here: providing a menu of options. Certainly the opposition parties were very concerned that one particular option has been eliminated, where I think in governing today, governments, and in this case the criminal justice system, need the flexibility, in this case to fit the appropriate offender to the appropriate sanction. I would not want to see the elimination of any of the options and they all should be considered, for sure.

I was going to get into boot camps, but that's another thing.

On your remarks, I noted you said in your first recommendation that "alternative secure settings be explored for

persons on remand such as through electronic monitoring or in a community residence." I have two questions in regard to using a community residence for that. You stated that the per diem cost had risen to about \$80 in 1990 for a CRC. I forget, but how does that compare with our per diem rate in jails today? That's got to be fairly comparable.

Mr Sandhu: I believe it's about \$120.

Mr Ramsay: So it might be a cheaper option. That's maybe something to explore for cost.

You hinted a little bit about getting to know the offender on remand, and that would be my concern. Would there be enough time to do a risk assessment on somebody remanded, to be able to do that thoroughly enough to put them back out in the community? That would be a concern I would have.

Mr Sandhu: Those are all very valid concerns, but there is a proportion of the remanded population out there that we do know. There is a segment of this society that keeps coming back. We know them. They've been through the system before.

I generally take a cautious approach to all this and that's why in my report to you I suggest that we should study that issue and study that population before we make decisions about how many and who all can we put out there. It just seems to me that we can put some out, and I think as far as cost is concerned — you see, for remanded population you would not require some of the programs that you require for the sentenced. These are very short-stay people and basically all you're doing is looking at an alternative between a very maximum secure facility and bail supervision or to simply be on their own recognizance. It seems to me we should be able to find something which is intermediate and at a lesser cost than what we were paying even for CRCs.

Mr Ramsay: Mr Chair, do I have a little more time?

The Chair: Yes, you have more time.

Mr Ramsay: I'll take it in the next go-round then.

Mrs Marion Boyd (London Centre): Just following on from what you've said, if someone is remanded to prison these days rather than released, on conditions or without conditions, on their own recognizance, usually there's a reason they're incarcerated and that reason is public safety concerns. Is that not true?

Mr Sandhu: Like I said, I'm not absolutely certain everybody falls into that category. My difficulty is that by and large this population that is in our maximum security facilities has not been studied. I don't know the characteristics very well. All I know is that I often look at decisions being made at the bail hearing level where they're not always very clear in the sense of, what if one could meet that bail requirement? Then, fine, he or she gets to go home, and if they cannot meet that bail requirement, they get to go to this very maximum security facility.

1600

All I'm suggesting is that we have close to 2,500 or so on any given day in our remand centres, in our detention centres. In my notes, I also point out that some time ago the federal sentencing commission, or rather the law reform commission, one or the other, looked at this, and there was some pressure on Canada as a result of what

Canada had said at the United Nations level about human rights and the violation of human rights in some other countries, that Canada needed to look at its own imprisonment policies. As a result of that, I remember attending a meeting with this commission where the question was asked, can you look at separate and apart facilities for remanded people? Of course, having just gone through the Young Offenders Act, those of us in corrections were petrified that here we would be looking at once again establishing a whole other system.

At that point the feeling was that a very large number of these people actually are serving sentences on some offences and are remanded only on some others, so really technically they cannot be let out and they cannot be held separate and apart, and a number of other scenarios sort of appeared. But my impression was that we didn't have a complete picture of them.

Mrs Boyd: If people are being remanded because they can't make bail, that's a very different situation than people being remanded because of public safety. Surely there's some way to get some statistics on that. Surely there are some means to do that. It doesn't sound very complex to me.

But it does seem to me that what we are looking at, both in terms of the bail situation and when C-43 comes in in terms of release through the police authorities, is that the vision is people will only be kept if it is decided that they are a risk to public safety, in which case you say they're usually there too short a time to do a risk assessment on them, and yet very often that is exactly the point at which you need to be doing that risk assessment, since you have the tool.

One of the things we've been talking about here has been, at what point is that risk assessment tool to be brought to bear? Should it be brought to bear sometimes even with a delayed bail hearing, sometimes with a remand situation, sometimes as a pre-sentence report and through in that way, and how is that best used as a resource in terms of protecting public safety? If the general population thought people were being remanded and housed in jail because they didn't have the financial resources to make bail, I think people would be rather annoyed at the cost to us, the taxpayer, if there is some other means. I think you're right about that. But if in fact it's a public safety issue, then I think people would want to be sure the risk assessment tool had been used before someone was released on electronic monitoring.

Mr Sandhu: Absolutely. If you can implement risk assessment at the bail level, I think that's fine. Please understand, I'm looking at it from the tail end; I'm looking more from a correctional point of view than from the front end; obviously you have an advantage in that regard. But I do know of some of the changes that are being suggested and I think all of those can result in making sure that people are sort of sifted through the system much better. It's just that I also have the impression, and I could be wrong about it, that sometimes implementing changes at the front end is not that easy. Let me just say that, yes, I would support a risk assessment at the bail hearing level, before disposition. The sooner we know what kind of person we're dealing with,

what the ramifications are for public safety, the better off we would be.

Mrs Boyd: You suggest the judges should be consulted about this range of sentencing things, and I think they do contribute to the sentencing commission at the federal level. I don't see any reason why there would be a concern about independence in terms of looking at this and giving their opinion. It seems to me that most provincial judges I've talked to have exactly the opposite concern, that no one ever consults them about this sort of thing.

Mr Sandhu: Yes. The point I was trying to make there was just that, that I think there is a need to consult the judges. I'm not sure if any judges have given you any information on this issue on conditional release, or rather, on the issue of community correctional facilities or electronic monitoring, but I think it would be very helpful.

I am simply getting at the fact that as I see the system, I see the judges as very crucial to the operation of the system. My fears are always, to use a graphic analogy, in the health care system, it would be like if your family physician diagnoses you as requiring surgery on your gall bladder and the operating surgeon takes a kidney out or something. That's the way the system would appear if the judge's reasons for sentencing and orders were not properly taken into consideration, and often that's what happens. The system doesn't know what was intended in the particular instance.

I think we're probably saying the same thing, and I'm saying that even for issues such as CRCs and electronic monitoring, it would be good to have the judiciary's view.

Mr David Tilson (Dufferin-Peel): Mr Sandhu, the notes you have provided to the committee, along with your oral comments, have been very helpful, particularly on page 2 of your notes where you have outlined a bit of the history since you joined the Ministry of Correctional Services, I think your notes say in 1971.

Mr Sandhu: Yes, sir.

Mr Tilson: Are you telling us that there has been an evolution over a period of roughly 25 years from minimum security institutions to halfway houses to now electronic monitoring and perhaps community residential agreements? Is that what you're telling us, for a number of reasons?

Mr Sandhu: It's not quite that simple. I would say that the change as it occurred is that because of financial constraints, a number of programs that are seen to be soft in a way actually have been left off.

The ministry in 1971 was very much involved in running what were called adult training centres, for example, and these training centres were, I would say, close to about 400- to 500-bed capacity. There was a training centre in Simcoe; there was one in Brampton. These were minimum security facilities, no fences, much like a college or school atmosphere. In fact, the facility in Brampton was turned over to the OPP and is the OPP training academy. Corrections in Ontario got out of that kind of business because, as a result of constraints, it seemed that it was continually defining its role more in keeping people in secure places, or securer places let's

say. However, CRCs, it seems, took over from those minimum —

Mr Tilson: If I could stop you there, is it because of security or is it because of economic reasons, that change from minimum security institutions to CRCs?

Mr Sandhu: I think originally it changed for financial reasons, because, you see, you could buy a bed in the community a lot cheaper than you would run it yourselves. But certainly there were other considerations. The CRCs were much more widespread and they were in the community. You could place somebody there who actually had a job either around the corner or could get on the bus, whereas correctional institutions couldn't do that. They are fewer in number and they are farther away from your core areas of employment. So there were many reasons. It wasn't just financial reasons. That's how I would explain the change to have occurred.

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It seems to me that electronic monitoring is one of several sanctions, as you see in this chart, or several —

Mr Tilson: Can I stop you once again? I'm sorry, I just found the history of it interesting. Your notes seem to indicate that when CRCs or halfway houses were first introduced, there were few programs. You list substance abuse counselling, anger management and life skills counselling. Are you telling us that came later?

Mr Sandhu: That came later in the CRCs, yes.

Mr Tilson: So the CRCs were strictly used as another form of incarceration, I suppose. Is that really what you're saying?

Mr Sandhu: Yes. I think there were either low-cost or no-cost programs they could always implement. It wouldn't be much for the CRCs to have AA meetings arranged. So they were very innovative in that regard. In fact, they got into community work quite well. In some places they were opposed by the neighbouring community and then they worked hard to find acceptance from that community. So they did all that.

I recall visiting one where there were twin homes, and the CRC was a sparkling facility, whereas the privately owned residence was not. But let's face it, there were 15 to 16 young people who were living there and who had time. They could cut the grass. So what these folks would do is they would go over and do the work for the other people as well. This way there was some acceptance.

But again, I can see as it developed, as the assistant deputy said, it started to look like assisted housing, or the term that's used is subsidized housing. These people were not as well employed; nobody was. The recession and loss of jobs had taken their toll. There were more of them on job-search programs than were actually employed. So a lot of those factors started to play a role in terms of what the CRCs were starting to look like. In any event, that's the way I saw it. Those are my observations of it.

The Chair: Excuse me, Mr Tilson, that is the amount of time we have. I'm sorry, Mr Guzzo, there's no more time for questions. Mr Ramsay has two minutes left of his.

Mr Ramsay: I just want to clarify the second recommendation you gave us. You said, "...that corrections discuss with its community corrections partners the possibility of using some beds for those inmates who do

not qualify for electronic monitoring but can be supervised in a community residence in high-demand areas." You say then, "I understand that a meeting has been called by the assistant deputy minister with community corrections stakeholders to discuss future strategies." Are they discussing specifically that sort of idea? Do you know?

Mr Sandhu: No, sir, I don't know that. The notification I got states that they wish to look at future strategies for community corrections. My understanding is that a number of people attending are the people who were involved in CRCs. My assumption is that there may be some discussion there. Besides, I thought I also read that the ministry was reviewing its CRA beds, the ones they purchase. My sense is that there may be room there, and I think some of the operators could probably even look at establishing CRA-type facilities. In just talking to them, they seem to think that it may be possible; it's just that there is probably going to be a need for initial capital and things like that.

From the corrections point of view, a CRA bed is more practical. My feeling is that if people could sit down and discuss after they reviewed the situation in terms of how many beds could they use, when and at what point could they use, then something could be done. But by no means do I have any inside information or knowledge of where each party is going on this.

Mr Ramsay: A quick little question. Could you refresh my memory about a CRA bed?

Mr Sandhu: The ministry kept the community residential agreement: that's a bed that they purchase on a per diem basis.

Mr Ramsay: You might have two in a certain home. The home may deal with alcoholism or something but they've got a couple of beds for that purpose.

Mr Sandhu: Exactly.

The Chair: I was going to suggest, Mr Guzzo rarely gets a chance to ask a question. He is a member of the bench. You have the opportunity to ask a question, Mr Guzzo.

Mr Garry J. Guzzo (Ottawa-Rideau): I'm flattered. I thank you.

Mr Ramsay: It better be a good one.

Mr Guzzo: Was a member of the bench, left the bench to get back in politics so people would consult me and let me ask questions and unfortunately I've been assigned to this committee and been cut off by the Chair at every turn.

Just with regard to the issue of bail requirement, the problem that you've expressed here is a very real problem. I've heard the concern; now I want to hear, from your perspective, the solution. The truth of the matter is, as I think it's accurately stated, the most oft-time reason for refusing bail is not the danger to the community but the potential of the person not to reattend.

Mr Sandhu: I don't think, if there is that fear, that that person should be allowed to leave. He should be incarcerated in that regard. I'm not suggesting that those who might be seen as high risk be allowed to go to something less secure. I'm simply suggesting that I think we need to study that whole population. You would agree

with me that that's a significantly large number, about 2,500 to 3,000, on any given day.

Mr Guzzo: But if I'm correct about that, and the larger percentage is for the first reason, the unlikelihood of reattending for trial, then electronic monitoring to me seems to be a very viable alternative with that type of person.

Mr Sandhu: Sure. I imagine that with a certain type of offender, you could do that.

Mr Guzzo: It doesn't matter what type of offender it is, because we don't know whether they're innocent or guilty, and we're just hesitant because, number one, they have no fixed address, connections with the community etc, where the trial will be held and whether or not they're going to be around at the time. But the electronic monitoring is a far less intrusive method of ensuring their reattendance than holding them incarcerated until such time as the clogging of the court system allows for a trial.

Mr Sandhu: Let me say that, yes, in general principle I think what you're saying is fine, except that as long as you do understand that electronic monitoring in the scheme of sanctions and level of security that it would provide you with is that at a certain level in this chart, for example, and so I would have no difficulty. This is in fact what in part I am saying, that if once we study the group who are remanded, we could look at possibilities of using any number of these sanctions and any number of these measures to manage them better and to ensure that they do appear or reappear for their hearing.

Mr Guzzo: All right, but —

The Chair: Okay. Thanks, Mr Guzzo. We must move on. We just must.

Mr Sandhu, I'd like to thank you for your attendance. You've given us a new perspective and I think from the questions everyone found it most informative.

1620

COUNCIL OF ELIZABETH FRY SOCIETIES OF ONTARIO

The Chair: Elizabeth Forestell, Council of Elizabeth Fry Societies of Ontario. Welcome. We have one half-hour including questions, and I'd ask you to proceed.

Ms Elizabeth Forestell: Thank you for inviting us to appear before the committee. My name's Elizabeth Forestell. I'm executive director of the Council of Elizabeth Fry Societies of Ontario. The council represents eight Elizabeth Fry societies in Ontario and one emerging society. These agencies have worked with and for women in conflict with the law for about 50 years, providing services at both the provincial and federal levels and in institutions and in the community.

Services include after-care programs, residential programs, addictions recovery, sexual abuse counselling, anger management, parenting, employment training and counselling, court support, bail supervision and parole supervision. At both provincial and federal levels, we also offer expertise and consultative services to government in areas of policy and program development.

We've been recognized nationally as a voice of authority on issues pertaining to the treatment of women by the criminal justice system and the causes of women's

crime. An example in Ontario is the recent leading role played by the council in the work of the Women's Issues Task Force, a study of provincially incarcerated women. Incidentally, one of the recommendations of that body — a recommendation I understand was accepted — was that the government, "in partnership with community agencies and organizations, develop additional community residences and resource centres providing supervision and programming appropriate to the needs of women in conflict with the law."

In Ontario and in fact across the country, Elizabeth Fry societies are the only organizations specifically mandated to provide services and representation to women in the criminal justice system.

Just before I make my comments, I want to say that I'm aware that you've been given many, many details and much information and data over the past month and I'm not going to repeat that. I feel a bit like I'm flogging a dead horse because I don't think what I'm going to say to you today is very different from what the majority of your witnesses have said. However, I'll go on.

Across Canada, Elizabeth Fry societies have had serious concerns about the use of electronic monitoring. We've been talking about it since the 1980s. Some of the concerns that have consistently arisen have included the risk of net widening, the lack of supportive programs connected with electronic monitoring, the inability of many women to qualify for the program and conversion of women's homes into prisons. I'll come back to each of these concerns. In terms of the implementation of electronic monitoring programs in Ontario, we add to this list the absolute false notion that electronic monitoring can or will replace community residences, the lack of consultation with organizations such as Elizabeth Fry and other community-based experts before closing these residences, and that the use of electronic monitoring as an alternative to other kinds of early release has not been seen as advantageous, according to current research, in any way but cost-wise, and even that cost saving is in serious doubt.

First, I want to clear up a misconception the committee may have regarding the level of consultation between the Ministry of the Solicitor General and the Elizabeth Fry Society. When CRA beds were closed last year, not only were we not consulted, we received no notice of the impending closure. Like other residence operators and advocates, we were made aware of it only when the vans arrived to take residents back to jail, away from their jobs, program participation, community ties and paths to success on which many were working. This hardly seems conducive to strengthening partnerships with the community and improving links among ourselves as partners of the justice system.

Second, the notion that the residences were closed because of low usage is misleading. Underutilization of community beds is not due to lack of need, but to lack of speed in processing applications for community release.

Incidentally, this is a problem we see at the federal level and, in fact, there is a committee called the impediments to release committee that looks exactly at this.

At the provincial level it's exacerbated by the short length of sentences. Often, by the time someone gets

through the process, their sentence is over or there's not enough time left to bother serving in a community residence.

The problem of underutilization could easily be resolved by an efficient fast-tracking system, thereby saving dollars currently spent while inmates sit in jail cells waiting for the slow, grinding wheels of bureaucracy. The closure of CRA beds in Ontario was, I believe, the result of an ill-conceived, short-term plan, a decision that in the next few years will be seen as disastrous. By that time, unfortunately, the infrastructures that took so many years to develop will be completely dismantled, and we'll set upon the very expensive task of starting all over.

Aside from expense, community residential centres, as their name implies, offered inmates an opportunity to return to the community in a supported way. They were operated by members of the community, were set in the community and allowed residents access to other community resources. In addition, they gave community members an opportunity to participate in the correctional system in a positive way — not just by sitting on a parole board and deciding how much longer someone should stay in jail, not just by giving witness impact statements to make sure someone stayed in jail longer, but in a way that brought some balance back to their community. It gave community members an opportunity to take responsibility for correcting the imbalance created in our communities when a crime is committed. This community responsibility is vital to the successful reintegration of those convicted of criminal offences, and successful reintegration is the best safeguard against recidivism.

Electronic monitoring, on the other hand, has no such benefits. It does not allow the community to take responsibility. It does not even require much in the way of human contact. In essence, it does nothing but tell us where the wearer is. It does not contribute to community safety in either the short or long term; it merely creates a false sense of security. Electronic monitoring doesn't tell us how a client is doing in the community, whether she is under undue stress, about to get into trouble, likely to fall out of a substance abuse program, depressed or suicidal, generally in need of help or intervention. In fact, it doesn't tell us anything about how she's doing in the community. It doesn't allow us to help her through potential trouble periods; it only lets us know when she's already in trouble again.

It's important to remember that electronic monitoring wasn't developed by community members concerned with improving the delivery of correctional services; it was developed by the private sector in order to make money, and the private sector has been marketing it to us for many years. As much as seven or eight years ago I was at conferences where there were huge exhibition rooms filled with every kind of electronic monitoring device you could imagine. These were marketed very heavily. All the great lines we hear about how wonderful electronic monitoring is come directly from the marketing managers of those companies that make electronic monitoring devices and manufacture the computer programs to control them.

Any research we've seen on the use of electronic monitoring, on pilot programs, is inconclusive at best. In terms of recidivism rates, there is almost no variance that can be related to the use of the device. Jim Bonta's summary of 1994 points out that any appearance of low recidivism reflects not the effectiveness of the device but the fact that only very low-risk candidates are admitted to the program. He refers to it as the "cream puff factor." If it doesn't address the problem of recidivism, is there not a long-term cost that we should be looking at?

This morning I spoke to staff at the Ministry of the Solicitor General in North Bay. They tell me there are between two and four women in the community on electronic monitoring today. That's not a very specific number, and I'm not sure why their computers couldn't generate something a little more specific than that. I wonder if this can really be saving us money. Over the past few months, I've spoken to other correctional officials around the province. Generally, they tell me no women in their institution will qualify for electronic monitoring, either because they're considered higher than acceptable risk or because they're not able to accommodate the needs of the program, for instance, adequate residence or telephone.

One of the Elizabeth Fry workers in Peterborough tells me that a few weeks ago there were two women serving sentences for fraud. They were unable to qualify for electronic monitoring because they were unemployed and could not afford phones. This is a problem common to women in the criminal justice system. Their crimes are generally related to property, they are poor, they often have high needs in terms of substance abuse or survival issues, and those needs are actually translated into risk factors. If they've been incarcerated for any period of time, their resources are generally depleted. Release to a residential facility gives them time to perhaps find work, deal with some of their issues and get enough money together to pay rent. Electronic monitoring doesn't provide any of these opportunities, even if they do manage to qualify and get into the program.

1630

Another concern we have is the fear of widening the net. I'm sure I'm not the first person to say this to you. Since we hear that women are not being released from institutions to the electronic monitoring program, we can only assume that greater usage will occur at the front end, at sentencing. Therefore, we face the possibility that there will be an increase in sentencing. Women who normally would be sentenced to community service, probation or suspended sentences will instead be sentenced to electronic monitoring. It is our sense, and I must tell you that many experienced correctional and parole officials agree with me on this, that if electronic monitoring is all that is needed, it is probably not needed at all. The widening of the net only serves to increasingly criminalize our population.

In terms of community safety, electronic monitoring gives us a false sense of security. Because it is essentially surveillance technology, it is incapable of alerting us when the wearer is at risk to offend. Remember, it tells us only where the wearer is or is not. One example that's been used to support the use of electronic monitoring is

where the wearer may be considered dangerous and the device can be used to alert a potential victim of the wearer's proximity. How helpful is it to a victim to know the person who might hurt her is 200 metres away? Will the police be able to get to her home before she comes to harm? By the time she makes a call or gathers her children together to leave the area, it's probably too late. Electronic monitoring doesn't contribute to community safety. Furthermore, because of the stringent selection criteria, it wouldn't even be an option for someone who's considered to pose any risk to the community, so it's something of a moot point.

Electronic monitoring has the potential to make the home a prison for everyone in it. The family of the wearer, while perhaps providing support, is under a certain level of surveillance. Though they may not be "locked in" themselves, members are forced to live with someone who is, and to live with all the frustrations inherent to that condition. In some cases this may pose actual danger. What strikes me is the number of women we work with who have been victims of abuse and may still be living in that situation. If they're sentenced to electronic monitoring and to house arrest, they would be unable to leave when tensions arise. Surely this isn't a healthy living environment for women or children, whether it's the father or mother who is under electronic surveillance.

Electronic monitoring programs are dependent on technology, and technology can fail. I've seen an almost funny example of that. Just before the OPSEU strike this year, the computer system responsible for monitoring the program failed. Many of those on the program were reincarcerated, not because they had violated their conditions, not because they reoffended, not because of anything that was their responsibility, but because the technology broke and it didn't get fixed until after the strike ended over a month later. I haven't been able to obtain province-wide numbers, but one deputy superintendent told me it meant the return of about 20 people to his jail, and that's a small jail in the north. It doesn't make any sense to me.

In conclusion, on behalf of the Elizabeth Fry societies in Ontario, I beg you to look carefully at the implementation of electronic monitoring and to reconsider the closure of community residences in this province while some of the infrastructures may still be salvageable. Halfway houses for women provide the kind of support, specialized programs and supervision that enables them to rebuild their lives. Other alternatives to incarceration may help them maintain their lives, keep their families together and work towards the future. Incarceration steals away their lives, their place in the community and often their children. Electronic monitoring transforms them into a number in a computer and transforms their homes into prisons.

Just a number of points: First of all, electronic monitoring is not cost-effective. It seems that even the government agrees with this, since I heard the Solicitor General on the radio last week saying they are going to be spending hundreds of millions of dollars over the next few years on jails and courthouses in this province. It doesn't reduce recidivism; it doesn't provide support; it

doesn't replace residential services; it doesn't replace incarceration, but may be instrumental in widening the net, perhaps being imposed as a sentencing option in cases that would otherwise not merit incarceratory sentences; and finally, it doesn't contribute to community safety.

Mrs Boyd: Thank you very much for coming. It's been very helpful for us to hear from you the particular situation of women and the danger this may pose for them. I worked a lot with the William Proudfoot House and know that what you say about the need for support of women, almost 100% of whom have suffered abuse in one way or another, is quite true. It's a very difficult thing to imagine that electronic monitoring for that population would be an alternative. I share your concern.

When you look at this situation of the closure of the CRCs, do you think that has impacted more heavily on women as opposed to men in the province, and if so, why?

Ms Forestell: I hesitate to say that it has.

Mrs Boyd: I don't mean in terms of numbers. We know in that numbers between men and women who are convicted are so different. I mean proportionately.

Ms Forestell: Proportionately, women still have more of a chance of getting into a community residence than do men, so no, not in that sense. However, in terms of women being able to come out into the community to something supportive, one difference between men and women in the criminal justice system is that women's lives truly disappear when they go to jail. They very seldom have supportive partners who will take care of their kids, keep paying the rent, pay the phone bill and do all those things. Women very often come out of jail to absolutely nothing unless they're lucky enough to have a supportive partner. That's a very small percentage. Some have parents or family members who are still supportive, but in general they come out on their own, so having a halfway house there is a really vital necessity for them. For some of them it's the only way they're going to get out, whereas many men, or a larger number of men, have wives or partners who are taking care of things while they're in jail. In that way, yes, it's essential.

It's also essential in terms of the unique needs of women that aren't met, particularly in provincial correctional centres. There is no programming that deals with their histories of abuse, that deals with their issues around substance abuse. I know that's true in the men's system as well, but I think what happens presently and what has happened historically is that programs are created with the male prisoner in mind and they're adapted to fit women. That just doesn't work in a lot of cases.

Mrs Boyd: There are still these CRA beds run by the Elizabeth Fry in a couple of locations, so there is still that capacity. That is what you meant by still having some beds available. How many beds do you have available?

Ms Forestell: I'm off numbers. The reason I'm not sure is because I don't know how many in each residence are for provincial and federal women, but the Elizabeth Fry societies between Brampton and Toronto probably have about 10. I apologize if I'm wrong on that — not very many around the province. There are CRA beds in

other areas. For instance, near Peterborough the Sisters of St Joseph have two beds in their residence. There's that type of thing. Ottawa's beds are gone.

One thing that worries us is that, as the task force recommended, we need to be looking at building more options. There are women throughout the north who get completely cut off from their communities when they go to any kind of incarceratory period and there's no place for them to go back to on early release. What happens to many of them, and it's similar to what happens to federal women, is that they come to Toronto or Hamilton. It's not where they're from, they don't know how to handle the city, they're not big city people and they get in trouble very, very quickly. So we just see them continue on that long pattern.

1640

Mr Frank Klees (York-Mackenzie): Could I just get clarification? I believe you indicated that you were not in favour of electronic monitoring.

Ms Forestell: That's right.

Mr Klees: I believe you also just said that it's your experience that women typically do not have the home support, the spousal support to help look after children and so on. Doesn't it follow then that there would be an advantage if these women could stay in their homes as opposed to being removed from their homes, and perhaps be able to look after the home front, so to speak, and be with their children? Wouldn't that be an appropriate way of supporting them?

Ms Forestell: At first blush, yes, and I must say that when I first heard about electronic monitoring, I thought: "Oh, isn't that wonderful. Women don't have to go to jail." However, the reality is it's not happening. It hasn't happened in the pilot projects and it's not happening in the other areas you looked at. Women are not getting sentenced to electronic monitoring instead of getting sentenced to jail terms. That isn't what's happening.

Electronic monitoring is either being used on very, very low-risk people who would get out on temporary absence or extended temporary absence programs anyway or it's being used at the front end in sentencing on people who would not normally get an incarceratory sentence. That's the first thing. It's not as good a solution because of the way it's used.

The second thing is that if women can be kept in the community in a supportive environment, then it's much more useful in terms of dealing with the issues they have and stopping that pattern of criminalization they're coming into, because many women in the provincial system are in there repeatedly and they're in there for offences that indicate some deep-seated problem. Shoplifting indicates some real problems when people shoplift over and over again no matter how many times they get caught. That's a sign that something's wrong. That's not just a sign that they like to steal.

In that sense, I have to go back to what I've said, that if electronic monitoring is all that's needed, then it's probably not needed at all. It provides nothing except it lets you know where the person is.

Mr Klees: Would you agree then to perhaps a combination of electronic monitoring with a support program? I think what we're dealing with here is the issue of

halfway houses. Or do you feel it's important for them to actually be in that segregated environment as opposed to having the freedom to be at home with a supportive program to help them rehabilitate?

Ms Forestell: If they can be at home with a supportive program, it's much better than being in a halfway house in many cases. I think there are some cases that really need more supervision than that, but I am for the least level of incarceration possible. Many of the women that I see in jail should certainly not be there and should probably not be in a halfway house either. It's not necessary.

However, in terms of the use of electronic monitoring, if it's going to be used at all, then I hope it will be used with a lot of supportive programs and with a very wide range. But we all know that when programs get cut, the first things to get cut are these sort of considered optional things in the community, so that worries me.

It also worries me that, for instance, many of the Elizabeth Fry societies who were offering community after-care programs up until last year have lost the funding that allows them to do that. So in addition to their residential funding — and not only Elizabeth Fry societies but other organizations in the province.

I'm very concerned and I often have these discussion both with you folks and the feds that it seems you're subsidizing our programs, but you have to remember that in fact we are subsidizing your programs. We are subsidizing the conditional release programs, we are subsidizing the programs for people that have come out into the community, and we subsidize those programs through our fund-raising, because, believe me, we couldn't do it for what we get paid on the contracts. That's a long meander, I know, from an answer to your question.

I can only say if electronic monitoring is used at all, it has to be used with a wide range of services and support and that the services and support have to be guaranteed. If it's going to be useful for women, it has to be used in addition to some financial assistance, to make sure that we are not disqualifying women from that option simply because they don't have a good place to live or they live with someone who is considered to be in conflict with the law or considered to be dangerous or because they can't afford a phone.

Mr Ramsay: Elizabeth, thank you very much for coming. You offer, representing the Elizabeth Fry societies, a special perspective on how the justice system treats women in society, and we appreciate that.

In fact I very much appreciated your opening. I was just commenting to my colleague Marion Boyd about this, what we call, 125 initiative in studying the closure of the CRCs and the implementation of electronic monitoring to replace those and almost trying to remember why I was so exercised about this decision in the light of all that the government has done since this decision.

This was their first entrée into reforming, as they would say, the criminal justice system. We've seen since then the go-ahead of privatization of jails. We're going to have some new superjails here run by American companies. We see in this review of police services coming up possibly the privatization of policing in Ontario. So looking back, this almost looks like a timid venture.

Ms Forestell: I hope I'll get to come talk to you about those.

Mr Ramsay: We'll probably be asking you to, so I'm glad you're willing. But your opening really brought it back to me why this provoked so much anger, because of course this was done without consultation and the offenders were literally ripped from their jobs. Some people were woken up at their residence or taken away from their job and whisked back to those jails, and it did upset the people in the community, for sure, the way this was handled, without consultation.

What continues to bother us is that many of us who work with the system feel there should be a continuum of sanctions out there, as the previous speaker had mentioned, and there's one very important, what we think is a building block in criminal justice sanctions being eliminated by this government, the CRCs, and we're very concerned about that.

You said you felt the results of this are going to be felt in a couple of years with the closing of the CRCs. Could you give us in your words specifically what you feel the result is going to be? How are the women that you deal with going to be impacted by this decision?

Ms Forestell: In terms of the impact on women, I think it's going to have an impact on the whole system; I don't think it's just going to be women. In terms of impact on women, they're not going to get out on early release. I think that's what's going to happen. Perhaps they will be found to fail consistently on electronic monitoring. I understand in some of the research I read the revocation rate looks very high on electronic monitoring and that may simply be because it's easier to get caught once you have done something. It's not easier to stop someone from doing something, but once you've done it, you're caught.

I think we're going to find it's very problematic in that it doesn't reduce recidivism, it doesn't contribute to community safety, it's not solving the problem, so I think we're going to come back to saying, "Oops, I guess we were better off with those community residences that had some built-in supports." I think once you leave this a year or two or even another few months, those infrastructures I'm hearing already about, and this is outside of the Elizabeth Fry societies, small community residences that are trying to function with only federal beds are saying: "No, we're not going to be able to do it. We're going to have to close down."

1650

In a sense the province is very lucky because it's able to purchase those beds from community residences that are in large part under contract to the feds, so I think if you lose that, it's going to be very expensive. Think of the investment that had to be put into building a few community residences a few years ago. I opened an open custody home in New Brunswick several years ago and it was very expensive to start out. I think what's going to happen is you're going to find you need these residential beds and you're going to have to start over and that's going to be very difficult.

The other thing in terms of the impact, not just in terms of expense but the impact on the people who would be using the beds, is that the experts who are there now

will be gone. The pool of workers will shrink, so they're not going to get the same kind of support.

Many of the organizations, not just the residences but many of the organizations themselves will be gone because — I'm very lucky, I work for an organization that basically doesn't have any government money so I don't have to worry about that to such a great extent, but many of our member societies and many of the service providers throughout the province are relying to such a great extent on government funding that they will not be able to survive with community support alone.

Mr Ramsay: Would you say this is an experiment that's bound to fail?

Ms Forestell: Yes, I guess I would.

The Chair: Thank you, Mr Ramsay. Ms Forestell, thank you very much for your attendance today so ably representing the organizations you represent.

Now to report writing.

Firstly, you should have received from the clerk the research prepared by Ms Swift, which was a synopsis or a résumé of all the evidence heard to date except for the two witnesses today.

Secondly, you should have before you a possible, and Ms Swift puts it on no higher basis, framework for a report. The clerk has suggested that the way we proceed, if today we could give the researcher some guidance on the direction and the framework of the report, she can prepare a draft report, which would then go to the subcommittee which could work on it, hopefully very soon, and then we'd call a meeting of the committee to go over the report.

The reason for the subcommittee intervening is that we have two hours for the report, which is not enough time if we become involved, I don't think. That is the suggested method of proceeding. Are there any comments or nays as to proceeding on that basis?

Mr John L. Parker (York East): Satisfied, Mr Chair.

Mrs Boyd: Can I ask a question? One of the things I was curious about, because having not been a regular member of the Legislature this is kind of a new experience on a 125 for me, does the research report that Susan gave us all that summarizes the evidence automatically become appended to the report of the committee?

The Chair: No. According to the clerk, it can be or it cannot be. That's a decision we'll have to make. We may wish to comment on each witness as a committee in that also, so —

Ms Susan Swift: Maybe I could just jump in. Generally it is used as the context for the committee's discussions. In other words, this is what we heard from the witnesses, this is what the committee thinks, therefore the committee recommends this. So it is generally used as a context but it doesn't have to be.

Mrs Boyd: Thank you very much. I just wasn't aware of what the process was and wanted to clarify that for myself.

The Chair: The first thing we should decide, the clerk has educated me that this committee should make a decision before we enter our report-writing phase as to whether we shall discuss the report in camera or in public or in a private meeting, one, I take it, that would not be reported in Hansard. Perhaps the clerk can assist in past tradition in that regard.

Clerk of the Committee (Ms Donna Bryce): It's really up to the committee to decide whether they want to do it in open or closed session. Regardless of how you proceed, the report itself will remain confidential until it's tabled to the House, until it's reported to the House.

Mr Ramsay: I don't really think it's necessary to have our deliberations in Hansard from here on in until we want to get back on the record when we're close to concluding the report and obviously making a motion to table it to the House and that sort of thing. As far as this goes, I think we wouldn't need to put it on the record.

The Chair: We could go back to the record at any time if any member wished to. Any comment from the government caucus?

Mr Parker: I would only venture the comment that I'm perfectly happy to carry on on the record, but I'm not determined to insist on that.

The Chair: It does seem a waste of money.

Mr Ramsay: A waste of money, and also if we're off the record it might facilitate discussion a little because then you don't have to worry about recognizing everybody. Everybody can sort of jump in, and I'm sure we can all get along. It might be easier for you.

The Chair: Mr Ramsay has suggested, and Ms Boyd I think is in agreement — is there strong opposition to proceeding off the record until such time as any member of this committee wishes to go back on the record?

Mr Klees: Agreed.

The Chair: Good. We can then go off the record. Could we adjourn for two minutes and then we'll discuss the possible outline.

The committee continued in closed session at 1656.

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Substitutions present / Membres remplaçants présents:

Carr, Gary (Oakville South / -Sud PC) for Mr Hudak

Clerk / Greffière: Donna Bryce

Staff / Personnel: Susan Swift, research officer, Legislative Research Service

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Première session, 36^e législature

Official Report of Debates (Hansard)

Monday 24 June 1996

Journal des débats (Hansard)

Lundi 24 juin 1996

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

**Safety and Consumer Statutes
Administration Act, 1996**

**Loi de 1996 sur l'application
de certaines lois traitant de sécurité
et de services aux consommateurs**



Chair: Gerry Martiniuk
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Monday 24 June 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Lundi 24 juin 1996

*The committee met at 1613 in room 228.*SAFETY AND CONSUMER STATUTES
ADMINISTRATION ACT, 1996LOI DE 1996 SUR L'APPLICATION
DE CERTAINES LOIS TRAITANT DE SÉCURITÉ
ET DE SERVICES AUX CONSOMMATEURS

Consideration of Bill 54, An Act to provide for the delegation of the administration of certain designated statutes to designated administrative authorities and to provide for certain limitation periods in those statutes / *Projet de loi 54, Loi prévoyant la délégation de l'application de certaines lois désignées à des organismes d'application désignés et prévoyant certains délais de prescription dans ces lois.*

The Chair (Mr Gerry Martiniuk): I welcome the Honourable Norman Sterling, Minister of Consumer and Commercial Relations. I also welcome Mr Crozier, critic for the loyal opposition, and Mr Kormos, critic for the third party.

The first order of business is the consideration and approval of the report of the subcommittee dated June 18, 1996. Do I have a motion for approval?

Mr Ed Doyle (Wentworth East): I move that we approve it.

The Chair: All those in favour of adoption of the subcommittee's report? All those against? Carried.

I apologize to any presenters for the delay, but the proceedings of the House do not permit us to proceed until orders of the day have arrived. We intend, unless there's an objection from any member of the committee, to hear all presenters as scheduled today, though it'll be a little later.

We will proceed with the honourable minister, who will have 20 minutes to make a presentation, and then each of the critics will have 20 minutes each.

Mr Peter Kormos (Welland-Thorold): Could I just ask, in terms of questions to the minister, is there time allotted for that?

The Chair: That's included in your 20 minutes.

MINISTRY OF
CONSUMER AND COMMERCIAL RELATIONS

Hon Norman W. Sterling (Minister of Consumer and Commercial Relations): I'll attempt to gap that and bring that down so that the witnesses can get on earlier than would be anticipated.

I appreciate this opportunity to talk about Bill 54, the Safety and Consumer Statutes Administration Act, 1996. I believe it's an exciting opportunity for our government

to strike out in a new direction in dealing with these particular professions and with regard to safety in the province of Ontario.

I'd like to quickly review what the bill's purpose is in order to avoid any misunderstanding. Bill 54 will enable — and underline “enable” — the government to delegate powers and duties under 11 acts that my ministry currently administers to designated, non-profit — and I underline “non-profit” — administrative authorities. The administrative authorities will be separate and distinct from government or any other government agency, and each corporation would have a board of directors and a chief executive officer.

The boards will include representatives from industry, government, consumer groups and the general public to ensure that there's a healthy balance to these boards. This bill also gives the government the power to appoint one or more board members, provided it's a minority; in other words, not 50%. This means we can ensure that a fair and balanced representation of all interests and industry sectors is in place. All board members, under corporate law, will have an obligation to fulfil the organization's public interest mandate.

The act will allow these corporations to assume responsibilities over real estate brokers and salespeople, travel retailers and wholesalers, motor vehicle dealers and salespeople and cemetery operators.

Once we have reached self-management agreements with these sectors, they will assume responsibility for such functions as registration and accreditation of industry members, investigations of consumer and business complaints, suspension or revocation of registrations and prosecutions of violations.

While we would be moving away from direct provision of these functions, government would continue effectively as a watchdog, maintaining a role in the areas of standards setting, defining policy and monitoring industry performance and conduct.

The safety organization will be set up to administer the regulation of technical standards in the areas of boilers and pressure vessels, elevating and amusement devices, hydrocarbon fuels and equipment and, last but not least, upholstered and stuffed articles. Service delivery functions currently carried out by my ministry's technical standards division will be delegated to this new organization.

I'd like to emphasize that what we are talking about, what Bill 54 would enable, is self-management, not self-regulation, and certainly not deregulation. As most of you know, there are clear differences, as the names themselves imply.

Self-management is simply the delegation of administrative and delivery mechanisms, not the delegation of rule-making or setting of public safety standards. Complete regulatory and legislative authority will remain with the government.

Bill 54, once enacted, will cut red tape for business and provide more effective services to the public. The act will allow the government to delegate to non-government, non-profit organizations certain functions currently carried out by my ministry. For instance, safety inspections are currently performed to meet safety codes and standards, most of which have been developed by recognized national and international standards-setting agencies. These standards have been adopted by the Ontario government through regulation. Bill 54 would not give industries the flexibility to depart from these standards, and the safety organization would not have the authority to make regulatory changes.

1620

I'd like to assure you that our government will continue to safeguard the public interest by retaining full responsibility for safety standards through legislation and regulations. In fact, we are convinced that this approach will provide better protection for the public, which is our major goal. These new organizations will be able to respond faster to emerging issues than government ever could. They won't be mired in protocol and red tape every time immediate action is required or when the consumer is in need.

It's clear from second reading debate that some misconceptions have arisen, and I think it's especially important that I correct one in particular. We will not be setting up private sector companies that will be out to make a buck. This is simply inaccurate. The safety organization and the administrative authorities that this bill will allow us to create will be not-for-profit entities, so it should go without saying that they will not be out to make a profit. Rather we have stipulated that any surplus revenues must be reinvested in continuous business improvement and development, such as education and training programs for industry members or upgrading technology, which in turn will improve customer service.

We are also following the lead of other jurisdictions where this approach is working extremely well. In Germany and other European jurisdictions, for instance, this private sector approach has been adopted with good results. Closer to home, our federal government is in the process of delegating responsibility for its air navigation system to the private sector. Perhaps the best example of this approach in action is in Alberta, where the delegated not-for-profit organization, very similar to the one this government is proposing, has successfully assumed responsibility for the delivery of boiler and pressure vessel public safety programs and services. Alberta is also in the process of establishing a similar organization for elevator and amusement devices.

I hope it is by now perfectly clear that our government remains committed to ensuring the highest public safety standards and will continue our role of setting such standards and ensuring they are enforced. The government doesn't always need to directly deliver programs and services to guarantee that public safety standards will

be met. A number of accountability mechanisms have been built into the proposed legislation and agreements. These mechanisms will ensure my ministry retains the means to address any concerns regarding an organization's performance or accountability. The government will have the authority to revoke delegated functions should marketplace or public safety standards ever fall below an acceptable level. In other words, the safety and self-management organizations will be held accountable by the government for the performance of their delegated functions.

Before concluding today, I'd like to address the important issue of customer satisfaction, which after all is key for all of us. It's something we in this government are very concerned about. I'd like to cite a consumer satisfaction study released just last week by the National Quality Institute and the Consumers' Association of Canada. Overall, it seems consumers are highly satisfied with the service they receive from most businesses, including automobile dealers, where 76% of the people rated them good or excellent, and real estate agencies, where 73% were satisfied. However, government departments don't score so well; in fact they're trailing miles behind these businesses, with a mere 40% consumer satisfaction rate.

In summary and for clarity's sake, let me say that what Bill 54 is really about is delegating the delivery of services to private sector entities. This will allow government to better focus on results rather than the delivery mechanisms and the technical processes.

Thank you very much, Mr Chairman. Before I turn it over, I'd just like to introduce the people who are sitting with me. On my left is Stien Lal, my deputy minister; on my right, John Walter, the assistant deputy minister for technical standards branch; and on my extreme right, Art Daniels, the assistant deputy minister responsible for my business division.

The Chair: Thank you, Mr Minister. Mr Crozier, Mr Kennedy, you have 20 minutes between the two of you for questions or statements, as you prefer.

Mr Bruce Crozier (Essex South): Thank you, Chair, and good afternoon, Minister. I'd like to start out by making a few comments on where our general concern is, and then in some time remaining Mr Kennedy would like to make some comments and ask some questions.

The minister has stated that the government is intent on reducing red tape, but I hope that during these two days of hearings — and frankly that's rather limited and we've had to prepare for this rather quickly — we're able to determine where that red tape saving is, particularly in the area of consumer safety. We certainly don't want to reduce the level of safety that's offered to our residents in the province of Ontario, and I would hope the government doesn't want to do that either. In other words, in order to maintain the same level, it will be of interest to us on this side to find out where the red tape savings are.

Public safety is something, Mr Chair and Minister, that we simply cannot compromise on, and in the area of consumer protection we feel as well that there's little area where we can reduce our vigilance. We feel that in some areas this act raises some questions. One is accountability. At the present time the government is the one

that's accountable, and I think consumers and citizens alike feel some certain security in that. If we move to these not-for-profit organizations, we wonder where this accountability will be. It may be too that someone may be able to comment on where liability lies, because hand in hand with accountability is liability.

We note in section 11 of the act under crown liability that there is a standard provision limiting crown liability in several acts, one being the Energy Act, as well as the Elevating Devices Act and the Gasoline Handling Act, and that there is certain indemnification that's going to be required under that where administrative authorities are required to indemnify the crown. What this raises in my mind is the fact that these not-for-profit organizations will have to have a considerable amount of liability coverage and liability insurance, for example. I want to be assured that is available and that we won't be dealing with not-for-profit organizations who for the most part — I don't know whether they'll have any assets other than the liability coverage or any assets that could be attacked in the case of a suit unless they do have some actual insurance liability coverage.

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Overall, we realize that the public sector is downsizing, but again we wonder if, in the protection of consumers and the safety of consumers, these not-for-profit organizations can retain their same levels of inspection and review in view of the fact that if the government was going to downsize, what will these not-for-profit organizations do? Will they try and do it with fewer inspectors?

I have a feeling too, which may be able to be addressed throughout these two days, that when a presumed neutral body like the government is taken out of the game — in other words, these organizations will be contributing to and will be, as a matter of fact, according to the minister's statement, a part of administering these regulations — it will be seen as they are looking after their own self-interests. We want to be assured that that's not the case. We feel to some degree that self-governance as a theory makes sense, but in practice, an efficient government agency can be more neutral and better positioned to represent the broader public interest than can any self-policy body. So I would hope that would be addressed over the next several days.

Specifically with the minister's statement, I wonder if I just might refer to it briefly. On page 12, Minister, you make the statement that there has been a survey by the National Quality Institute and the consumers' association of consumer satisfaction, and you've addressed some statistics there. But you say that "government departments don't score so well," and you go on to say that "they're trailing miles behind these businesses." Can you tell us what government departments you were referring to in that statement on page 12?

Hon Mr Sterling: Hopefully not mine. I have to refer to someone there. I just take that as an overall statistic in terms of people's satisfaction with governments overall. It is probably a statistic which is not hugely accurate to draw conclusions on but it's probably the people's perception of dealing with government because you'd be talking about municipal governments, I assume, and Ontario governments and federal governments overall, so

you can't make it specific to my departments or the entities we're dealing with here.

Mr Crozier: With all due respect, Minister, I'm very surprised you have it in there then.

Hon Mr Sterling: Well, I think it's a general attitude.

Mr Crozier: In view of your answer, could we just disregard that comment about government efficiency and the acceptance of it?

Hon Mr Sterling: I'll bring you a copy of the study tomorrow for your own perusal and you can draw your conclusions from it.

Mr Crozier: We appreciate that, Minister. You were asked a question in the House today and we were told that you were going to answer it here and now we ask you a question here —

Hon Mr Sterling: I wasn't asked that question.

Mr Crozier: — and you tell us you're going to answer it tomorrow. You've had more time to prepare for these hearings than we have, Minister. Again, I'm surprised you'd make a statement like that and not have the information here to back it up, but we would in fact appreciate having it tomorrow.

I think that's all the comments and questions I have and I'll defer to Mr Kennedy.

Mr Gerard Kennedy (York South): Minister, I did raise a question in the House. You did say on May 16, in introducing the legislation, that this would be consistent with doing better for less, and yet it seems fairly clear that the individual entities will have more money than current expenditures take. In other words, this is not an efficiency of government.

You said in the House that wasn't the objective, but I think the curiosity that people have is, is this an ideological move or is this a move that's really going to promote the health of business and the health of consumers? I think some very large concern is raised unless you can provide for us today precise figures about how much it costs currently to run the real estate, motor vehicles, travel industry and cemeteries branches versus the revenues they bring in so that we know exactly what the new boards will have by way of revenues and expenditures. I think people want to be assured that this isn't being done simply for the sake of getting it done and there isn't some sloppiness here in terms of revenue going to industries which could just lead to decreased fees and so on rather than really effective confidence being built on better action in the marketplace, because I think that's what the industries and consumers share as an objective.

Can you address specifically the costs involved in the real estate, motor vehicles, travel industry and cemeteries branches versus the revenues they bring in?

Hon Mr Sterling: Mr Kennedy, I'm not against decreasing fees to any of these particular professions or services. If that can be done more efficiently, that would be a double benefit as far as I was concerned.

I can ask my deputies to give you the various figures they have, and perhaps if you want to engage in that debate now, that's fine.

Mr Kennedy: It's not a debate, sir. It's a question requesting facts, and I'm hoping they're on hand.

Mr Art Daniels: In the real estate and business brokerage section right now, the government expends \$1.5 million and brings in approximately \$4 million of revenue. So your question then is, there is more revenue than there is expenditure.

Mr Kennedy: Yes, and do you have the corresponding figures for motor vehicles, travel industry and cemeteries?

Mr Daniels: Yes, I do. Travel is a little closer together: It expends \$287,000 a year and it brings in a revenue of \$400,000. In motor vehicles, it expends approximately \$600,000 a year and brings in \$3 million in revenue.

Mr Kennedy: I'd like to ask then, Minister, in light of these figures, what is the intention of the government in terms of giving these fees which subsidize the other consumer protection activities and their retention, which I think the minister must be saying are very, very important, which have an effect — why would we increase the deficit to see these industries given a bonus in this respect?

Hon Mr Sterling: First of all, I don't get these revenues. These revenues go into the CRF, the central revenue fund, and therefore, whether fees are twice or three times what we need, previous governments have seen fit, I feel, to raise these fees exorbitantly, above where they should have been raised in terms of providing the service we are providing to the consumer and to the associated industries. Therefore, I don't feel there's any shame in saying to them that they can look forward to lower fees with regard to these particular activities. The amount of money we're talking about is very, very small when you look at the overall government operations, \$46 billion or \$56 billion.

Our thrust in doing this was because we believe this will be better for the consumer and for the professions that are involved.

Mr Kennedy: I'm sorry, Minister. I think there is an inference here that is a discredit to good industries that I'm sure are acting in good faith that they are getting some kind of money, consideration, from the government as part of this.

Hon Mr Sterling: It's their money.

Mr Kennedy: But I think their money is in pursuit of the confidence in their industry, and I think to the extent today — for example, when we cite the auditor's report looking at the safety side of things, and I will cite figures and perhaps the deputies could say whether or not they're accurate. But the public accounts show approximately \$19 million in revenue on the different branches for the engineering, technical safety area and approximately \$15.8 million in expenditure, for a net \$3 million that would go extra to that agency, and yet we have criticisms in the Auditor General's report, concerns about the number of inspections that are taking place. We have similar concerns about the business practices division.

Hon Mr Sterling: That's exactly why we're doing this.

Mr Kennedy: But I think you're in a contradiction, sir. In other words, I think the public needs to know — and I'm sorry, Minister; I will give you a chance to respond — why you did not apply those revenues to improving consumer safety and consumer protection and

why those revenues were not cited so that we could have the appearance of openness and transparency at the beginning of this process, so we could all know that this much money was being refunded to those businesses and they don't labour under this impression somehow that this money is being transferred. Because it's been very difficult to get these figures. We were told by the ministry we'd have to use the access to information act in order to get at them.

So if you could address both of those questions: Why didn't you take the opportunity to increase the services to consumers and to the businesses involved because of the revenue that's there that could be used for that purpose?

Hon Mr Sterling: Because I guess the most important function of the new safety organization is that it will not be hampered by other pressures of government for a minister to reduce his expenditures column, the expenditures side of his ministry. The safety organization will be able to keep the revenues they get from elevator inspections, from approving designs for boiler and pressure vessels etc.

What has happened over the history of this ministry has been that the number of elevator inspectors, for example, has gone anywhere from 50 down to the low 20s. There are presently about 47 or 48 elevator inspectors there now. The reason they went down, Mr Kennedy, was because the finance minister of the day said to the ministry, "You constrain." They looked back into their ministry and said, "Yes, we'll constrain in the areas of inspection and enforcement." The beauty of this particular organization is that they will not be constrained by that and will be able to react to the real safety needs of consumers because they will have their own revenue-generating organization.

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Mr Kennedy: But, Minister, the reason the number of elevator inspectors went up is because of the report of the Provincial Auditor, which will no longer apply because these will not be transfer agencies. He will not have authority any longer to scrutinize the activities. Twenty-eight inspectors were added because the Provincial Auditor was in a position to point out the non-compliance.

I would like you to explain to us how, when there is no direction from you about the application of these surplus funds — \$3 million in the case of the safety organization — there will be increased, better standards for industry. I think it would be very helpful if you could make that clear.

Hon Mr Sterling: Under the memorandum of agreement, they will have to account to me for every penny they spend.

Mr Kennedy: Will you today undertake to ensure that the setup dollars you provide to each agency will be spent in pursuit of either consumer safety or consumer protection? In other words, will you enjoin those agencies to use those dollars for the interests of their particular industries as well as the safety of the consumer and not have those being applied to any other purpose, so that if indeed it is that important to increase our deficit, that will be part of the administrative agreements you strike with each of the associations?

Hon Mr Sterling: I can give an undertaking that every dollar will be spent to administer the acts which these people are given to administer. Those acts are there for those very purposes you mentioned.

Mr Kennedy: I think people would like to know about the accountability mechanisms. Where I think, again, the worthwhile efforts of some of the industry members may be put under an unfortunate aspersion is that accountability mechanisms all have a majority from the industry associations rather than a balance from consumers and other interested members of the public.

I wonder if you could tell us why that was made necessary, especially when it seems you're going to spend in the order of \$6 million to \$9 million of public dollars to see these set up in some fashion or other. Why you don't use your power to ensure there's a balance there so that the onus won't be put simply on industry to make these decisions and we won't see them slighted in how those decisions finally get made?

Hon Mr Sterling: Are you talking about the balance of the boards on these particular —

Mr Kennedy: Yes. I understand the majority will be from the industry associations and you will have only the power to appoint a minority of other groups.

Hon Mr Sterling: That's right.

Mr Kennedy: I'm wondering if you could explain why that is necessary. Given the fact that there are public dollars being used here, shouldn't those public dollars that you're allowed to transfer — in the sense that they are fees that have been collected in the public interest.

Hon Mr Sterling: Under other provincial legislation that we have, we cannot create an agency that can collect revenue unless it has a majority on the board. In other words, we cannot create agencies out there that are self-revenue-receiving, which I want to do in these five particular instances, without giving them a majority on the board. When I'm talking about the self-management regulation — the real estate industry, the travel industry, the cemetery operators and the automobile dealers — when I'm talking about those particular agencies, in virtually every self-management model we have in the province of Ontario, be it the health care profession, the teaching profession on which we just passed a bill in the Legislature, the balance of the board is far more weighted towards the professions than the ones under this particular model. In terms of the restrictions I'm under under our present laws — I believe it's the Management Board of Cabinet Act — which previous governments have run their business by and we continue to run our business by, I am obligated to do it this way if I want to give them the right to keep their own revenue.

The Chair: Mr Kennedy, you have one more minute.

Mr Kennedy: Can I ask this very quickly then, or make this as a suggestion if the minister's response is included: that you include in the administrative agreements, on a goodwill basis, I would assume, with some of the industries, the ability to ensure that they appoint some consumer or other representation as part of their majority, and further, that there be some baseline results. I think the concern you've raised with giving \$6 million to \$9 million of public money means that people want to know what baseline you will hold these agencies to.

I would ask for those to be tabled, what results have been achieved by the government-run agencies and what baselines we will expect in your agreements, or as part of this legislation if necessary, because consumers need to know we're not going to simply dilute the standards which exist. We've had a terrifically difficult time and I appreciate there isn't time to answer now, but I would like to have that tabled for this committee, what standards the ministry is now meeting so that we know what baselines will be met.

Hon Mr Sterling: The interesting part of this particular legislation is that consumers are, generally speaking, not represented at all under this government or any previous governments with regard to their input as to what is occurring around these particular professions or the safety organization that we're talking about here. That's because when it's within government, it is run by employees of the government of Ontario, and traditionally the consumer groups have not been as strong as the industry representatives in terms of coming to the government. Consumer groups tend to be more disparate in terms of their focus, whereas the industries are focused on their particular industries that are there.

I think that consumer representation will be enhanced immeasurably by these particular moves with regard to the control of these professions and the safety organization. They will be a formal part of the process and the decision-making that is going to go on with regard to these particular activities of enforcing government regulation. In answer to you, I believe consumer protection will be enhanced, not only in terms of the end result but also in terms of the consumer input.

Mr Kormos: If I'm a travel agent down in, let's say, Thorold, what type of red tape am I encountering now that you're speaking of that I'm going to be relieved of by virtue of this bill?

Mr Daniels: First of all, the major piece of red tape is just the licence itself, the paperwork and the processing of the business registration. It's a multiple form, and it will be electronic in the new world. You'll be able to transfer that information, not by mail but by use of a modem or the Internet. That will be a big saving to business, just on the straight bureaucratic processing of the registration and licence process.

At the beginning though, of course, the present Travel Industry Act will be the act itself. It will be the same regulations they work under today. It's not deregulation, but there will be savings, as I say, in the technical area in terms of efficiency, in terms of bureaucratic processing.

The industry compensation fund will be operated by the industry itself, which funds it, so it will be accountable to the industry which puts the money in.

Mr Kormos: Are we still on the red tape issue?

Mr Daniels: Yes.

Mr Kormos: Okay. What red tape am I encountering now that I'm going to be relieved of by virtue of this bill with respect to the compensation fund?

Mr Daniels: Again, the licensing process.

Mr Kormos: I can do that electronically?

Mr Daniels: Yes. And again, the paper processes.

Mr Kormos: Okay. Why don't we move on to motor vehicle dealers. What's the red tape? If I'm the owner of

David Chev-Olds, a unionized General Motors car dealership down on Niagara Street — where I bought my Chevy S10 last year with which I'm very happy, as well as the service from David Chev-Olds — what kind of red tape am I encountering now that I'm going to be relieved of under this legislation?

Mr Daniels: Every two years all the sales people and the organization have to register and reregister, so there are 28,000 pieces of registration documentation that come to the ministry. That registration process takes time in terms of mail processing and all that —

Mr Kormos: Are you getting to electronic filing?

Mr Daniels: Yes.

Mr Kormos: I thought you were. Okay, so that's the red tape.

Mr Daniels: That's the primary red tape.

Mr Kormos: It will be electronic filing. Does the same apply if I'm a real estate agent?

Mr Daniels: Yes, the same thing.

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Mr Kormos: Okay, so it's electronic filing. The red tape you're talking about is the necessity of my currently having to fill out a paper form and put it in an envelope and mail it?

Hon Mr Sterling: Could I just interject here, Mr Kormos? I think too the organizations that you're talking about, be it the real estate authority or the travel authority, will know better what to require in terms of the formal process to ensure that the consumer is being protected than presently within my own bureaucracy, because they will be people who will be in the industry. They will have people within the industry who will recognize that to complain about things that aren't really that important to the consumer should be dealt with summarily, and things that are serious should be dealt with in a very dramatic way.

One of the problems we have faced, quite frankly, in the ministry has been trying to keep the focus on the right things in terms of being more interested in whether the address is correct or the name is exactly correct or whatever, rather than dealing with people who are misleading consumers, who are advertising falsely and that kind of thing.

I had an instance in my own riding where I had one real estate agent complain that on the sign of the real estate agent he had Gerry instead of Gerald, and the broker had to go through a long, involved correspondence fight with the registrar to explain why the name was Gerry rather than Gerald. My hope would be that the new organization would not tolerate that kind of foolishness.

Mr Kormos: But you reassured us that the government's going to continue to be responsible for standards through legislation and regulation.

Hon Mr Sterling: Right.

Mr Kormos: So if the misnomer, Gerald/Gerry, is not appropriate now, it won't be appropriate later. Is that not fair to say?

Hon Mr Sterling: I think what will happen is that the organization will come to me as the minister and say, "Mr Sterling, these regulations are ridiculous" —

Mr Kormos: Fair enough.

Hon Mr Sterling: — so I will change those regulations. They will get themselves in the mode of saying: "Hey, we're running this show. We'd better make sure that this show makes some sense."

Mr Kormos: You see, what I'm questioning is the rationale for this legislation. Very much in your comments today, it seems to be based on the elimination of red tape, and the red tape that we've determined is the cumbersome task of manually filling out a form and mailing it in to the ministry. Why doesn't the ministry just get into the business of e-mail with travel agents, car dealers and real estate agents?

Hon Mr Sterling: We are. We're going through —

Mr Kormos: Then why do we need this bill and the privatized regulatory body?

Hon Mr Sterling: Because, quite frankly, it doesn't matter whether it's paper or electronic registration or whatever, I believe the end goal will be reached much quicker with this self-management group than it will be within my own ministry or within the bowels of a government. They will react quicker with regard to changing technologies, changing methods of governing their own professions.

Mr Kormos: I know Mr Daniels and he's one of the most innovative, high-tech people in your ministry. Surely he's as capable of doing that as anybody in the private sector, isn't he?

Hon Mr Sterling: Sure he is, but I want him for other things.

Mr Kormos: There's going to be little left for him to do.

You indicate they won't be mired in protocol and red tape every time immediate action is required. If the government retains responsibility for setting the standards through legislation or regulation, how is that going to change the response time when action is required?

Hon Mr Sterling: Perhaps you can ask the real estate people when they give their presentation, but you will find, I suspect, that their answer might be that they not only want to be involved in self-management but they want to have a look at how their profession is run so that it makes more sense than it does now. They will be taking a very active role in coming to me in terms of getting rid of this red tape we're talking about here by suggesting other ways of protecting the consumer, in a better way than now but with less bureaucracy.

Mr Kormos: In view of the fact that the government retains responsibility for creating the standards through legislation and regulation, and in view of the fact that you imply the government is mired in protocol and red tape every time immediate action is required, when you have any one of these self-regulatory bodies coming to you, saying, "This is impossible to enforce," or, "It's cumbersome to enforce," you've still got the protocol and red tape that you suggest is inherent in government. How does that speed up the response time?

Hon Mr Sterling: If they come to me and say, for instance, that they want some rule which I or my successor doesn't agree with, they will have to put up with whatever requirements are there at the present time. But it's my feeling that we can work together in terms of dealing with the overall management of these particular

professions in a much more businesslike fashion that we presently do.

If we want to talk, for instance, about the real estate industry, we have some 50,000 registrants. In terms of applications or revocations, we're dealing with about 200 people a year, most of them being the refusal of an application because of checking out a record or something of that nature. I'd like to put that up with regard to our own profession, Mr Kormos, with regard to lawyers. Their ability and their maturity to self-manage might even be greater than ours.

Mr Kormos: Ours hasn't been very impressive.

Hon Mr Sterling: No, that's right. That's a bad example.

Mr Kormos: Self-regulation, as well as self-insurance, with lawyers has been thoroughly unimpressive. Pick another profession.

Hon Mr Sterling: How about my engineers? Anyway, my belief is that they've had a good act in the past, they've demonstrated that and they're mature enough to do this at this time.

Mr Kormos: What consultation have you had with the Ontario Public Service Employees Union about the job loss that's inherent in the self-regulation of these respective industries?

Mr Daniels: It's a very good question. The process of consultation goes back — I was actually searching this out — to 1991. We had a full staff consultation at CCR in 1991.

Mr Kormos: Clearly after I was gone. My term in 1991 was measured in hours, if not minutes.

Mr Daniels: In that full consultation, we called it Setting Directions for Staff, and we asked staff what direction the ministry would go. The absolute number one thing when staff were asked was, "What kind of things can we get out of it?" They said the mature industry should self-regulate and look after itself.

Mr Kormos: Was that with the Ontario Public Service Employees Union?

Mr Daniels: That's all the staff, the whole staff of the ministry.

Mr Kormos: With the union?

Mr Daniels: The union staff were there at the meeting.

Mr Kormos: No, with the union.

Mr Daniels: Oh, the paid union staff?

Mr Kormos: The union.

Mr Daniels: No, it would be the staff of the ministry, all 3,000 at that time.

Mr Kormos: What consultation has there been with the Ontario Public Service Employees Union about the job loss, the job destruction that will be generated by these self-regulatory bodies?

Mr Stien Lal: Maybe I could add to that, Mr Kormos.

Mr Kormos: Okay, I will let Mr Daniels follow you then. Go ahead.

Mr Lal: The collective agreement, as you probably know, requires us to give formal notice whenever a predicted job loss is to occur. In accordance with that, we have discussed the possibility of the impact of this legislation with the Ontario public service union. We will continue to do so. The collective agreement also requires us to make all reasonable efforts to ensure that these

individuals will have an opportunity to work under the new environment, and we intend to do that too. It is an ongoing dialogue with the union and we will abide by the requirements of the collective agreement.

Mr Kormos: How many jobs of unionized workers will be destroyed as a result of the self-regulatory mechanism proposed in this bill?

Mr Lal: We do not have the exact number as yet because this is going to happen incrementally over the next 18 months and it will depend on when and how those administrative agreements are signed.

Mr Kormos: What's the model for appeal from decisions by these self-regulatory bodies, in view of the fact that CRAT, the Commercial Registration Appeal Tribunal, seems no longer to be applicable?

Mr Lal: For the present, it is still applicable.

Mr Kormos: What's the future going to hold in store then? You make it very clear that for the present CRAT is there. What does the future hold in store?

Mr Lal: That will be one of the items we will discuss with these industries, as well as with the safety organization when it's established, to determine if in the spirit of self-management they are interested in providing for a mechanism for appeal themselves or whether they wish to have CRAT continue to do this.

1700

Mr Kormos: You're going to let them make that determination?

Mr Lal: Hopefully, it will be through a negotiating process with those professionals.

Mr Kormos: You indicated that you don't know how many jobs are to be lost, but Mr Daniels told us very specifically what the revenue was and what the cost was for respective areas of regulation. Clearly cost includes wages, and when you're determining costs you take X number of people's wages and multiply by that number of people. How many people are employed in the four regulatory areas that we're talking about here on the issues of cemeteries, travel agents, real estate and motor vehicle dealers?

Mr Lal: We can certainly provide you with that information. You asked me about the job loss, and that would depend on the nature of the arrangement and when the transition occurs. I'm sure Art Daniels knows exactly how many people are employed in these areas in his division.

Mr Daniels: I think it's two questions: the people who are employed and then what will happen after self-management is dealt with in terms of discussions with the industry. That answer: We don't know what the full ramifications will be. There will be an oversight function. The minister said very clearly that we would still set marketplace standards, deal with business plans and set performance standards — the question asked earlier. There would still be a residual function of government, and that has to be dealt with through discussions with our industries.

But in terms of the staff as we now have them deployed, I can give you that exactly. That comes to your red tape question too. There are 27 people employed in the ministry who deal with the Real Estate and Business Brokers Act. Of those, 20 are clerical staff. The other

seven are involved in the licensing — the actual registrar and the compliance inspectors and investigators. I think that shows you that there's a strong bureaucratic function in terms of paper function.

Mr Kormos: I've got to write this down. What group was that?

Mr Daniels: It's a total of 27 people involved in real estate.

Mr Kormos: You said 20 of them are clerical. So all of their jobs would be gone?

Mr Daniels: Not necessarily, because there will be functions for them in the self-managed industries as well.

Mr Kormos: Where?

Mr Daniels: There'll be roles in the self-managed industries for some clerical workers.

Mr Kormos: For some who may be hired on, at lower rates of pay?

Mr Daniels: That's not discussed yet. We're just beginning those discussions. That's an assumption.

Mr Kormos: So 20 jobs, though, in the OPS are going to be eliminated in the real estate from clerical.

Mr Daniels: I didn't say eliminated. That's our present strength.

Mr Kormos: You have seven investigators?

Mr Daniels: No, that includes the registrar's staff plus investigators and inspectors in that seven.

Mr Kormos: A total of seven. So we won't have any need for inspectors. Is that correct?

Hon Mr Sterling: The structure of this legislation is such that it may not all occur on a given day. It will depend upon the ability of the host self-management organization to take it over on that particular day or what functions it might take over on that day. Some are more ready than others and have been negotiating for a long period of time to have self-management occur. It will happen at different junctures over a period of time, and in some cases some functions may never leave the ministry. As I said in the very first part of my opening remarks, this is enabling legislation. We may never get to the situation where a particular function will be put over to the self-management group if an agreement can't be reached with the self-management group to do that.

Mr Kormos: But, Mr Sterling, please, the only red tape we've heard of is the paper filing of applications and the paper issuing of licences. We're looking at a shortfall for the government of a rough calculation of \$4.9 million in the mere areas of real estate, travel and motor vehicle regulation.

Hon Mr Sterling: That's not exactly accurate.

Mr Kormos: I'm using the numbers Mr Daniels gave us.

Hon Mr Sterling: No, I don't argue with his figures, but the problem is that you're not including in there the services that are provided by the central body with regard to these particular agencies, and those central service areas, some of them, will be diminished and some of these agencies will be charged to pay for those services on a continuing basis.

Mr Kormos: The fact is that there's going to be diminished revenue as a result of getting out of the business of regulating these areas, isn't there? It's not hard to figure out.

Hon Mr Sterling: We don't know that for sure. If it is, it will be a relatively small amount of money. We may, for instance, say to these particular agencies, or one of them, "If we are to maintain an accountability mechanism to deal with your particular industry, we will require a payment to the government for undertaking that role."

Mr Kormos: You mean these businesses are going to be hit twice? Once by the government so the government can maintain the revenues it's speaking of, and the second time by the industry regulatory body so that it can finance that regulatory program?

Hon Mr Sterling: The total will probably be less than what they're paying now.

Mr Kormos: How can it be less if you're telling us that there'll be little reduction in the \$4.9 million of revenues and yet the regulated industries still have to financially support their non-profit regulatory body? Surely, at the end of the day, it's got to be more. The numbers don't work like that.

Hon Mr Sterling: If you want to talk about the amounts, we cannot predict how those amounts will wash out. As I said to Mr Kennedy in the Legislature, I expect them to be revenue-neutral, or approximately revenue-neutral, when it's all said and done. I can't say within 5%, 10% or 15% whether that will be the case. Probably it will be the case that we will lose 5%, 10% or 15%.

Mr Kormos: You see, the problem is you can't have it both ways. You can't suck and blow. Either the government's going to have reduced revenues, which means that it's going to have to find that money somewhere else through increased taxes or increased user fees, what have you, or it's not. If it isn't, that means the businesses being regulated are going to be hit twice: once to maintain the current revenue level for the government and the second time to support these new industry regulatory bodies. Somebody's getting hoodwinked here, Chair. I would hope you would intervene in the interest of fairness and justice and small business. Surely this has raised your ire as well.

The Chair: Thank you very much for your submissions, Mr Kormos. Our time has elapsed for the minister's presentation. Thank you, Minister, Mr Lal, Mr Walter and Mr Daniels, for your presentation here today.

ONTARIO REAL ESTATE ASSOCIATION

The Chair: Our next presenters will be the Ontario Real Estate Association, Mr Richard Wood, president. We have 15 minutes set aside, including questions from the three caucuses. Would you proceed, Mr Wood.

Mr Richard Wood: Good afternoon, ladies and gentlemen. My name is Richard Wood and I am the 1996 president of the Ontario Real Estate Association. With me this afternoon are Rose LeRoux, immediate past president of the Ontario Real Estate Association and chair of our self-management group, and Jim Flood, OREA's director of government relations.

The Ontario Real Estate Association was founded in 1922 and currently represents more than 38,000 real estate brokers and salespeople throughout the province of Ontario. That is approximately 80% of the total number of registrants in the province. Our mandate includes

working with government and politicians to improve the environment for both realtors and real estate.

Thank you for the invitation to join with you this afternoon to discuss Bill 54 and the effect it will have on both realtors and consumers. Let me begin by telling you that Bill 54 represents a major milestone in OREA's quest for self-management that began some 25 years ago.

During that quarter of a century we have held hundreds of meetings with government officials, spent tens of thousands of dollars and devoted countless hours of volunteer time to reach this point. Over that time, the principle of self-management for the real estate profession has been reviewed and endorsed by governments of all three political parties. We believe that this non-partisan support for self-management for our profession is a very significant point and one that we are pleased to remind you of today.

Now let me ask Mrs LeRoux to outline some of the reasons why the Ontario Real Estate Association supports Bill 54.

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Mrs Rose LeRoux: As Richard mentioned, we believe that Bill 54 will benefit both realtors and consumers in Ontario. First and foremost, Bill 54 provides a mechanism through which the real estate practitioners will be able to administer the day-to-day regulatory functions of our profession. We believe this type of administration is superior to the existing practice of having civil servants administer our act.

With no disrespect intended, we believe that we are in a better position to administer our activities than any outside group. We know our profession better than anyone else. In addition, we in organized real estate have a long history of administering our own activities through local, provincial and national associations.

Second, Bill 54, in creating an administrative authority, will provide another forum to address our ongoing concerns with respect to the existing Real Estate and Business Brokers Act. As you may not be aware, our legislation is approximately 75 years old and was last substantially amended in 1946. That's 50 years ago, and the legislation we live with today does not reflect current business practice, nor does it reflect current marketplace needs. It is our intention to urge the newly created administrative authority to review and make recommendations for new legislation as a top priority.

Third, we believe that the new administrative authority should be able to do more with less. In fact, we believe that the existing registration fee structure can provide enhanced levels of service to the real estate profession and still operate at a surplus. This surplus will allow the administrative authority to make further investments in member and consumer education, improve oversight functions and more. Self-management will benefit the entire real estate community, but we genuinely believe that Ontario's consumers will be the biggest winners.

Let me provide a few reasons. First, we believe that self-management will facilitate the development of enhanced educational standards throughout the profession. For example, the Ontario Real Estate Association has long urged the government to adopt new licensing criteria that would provide for some type of mandatory ongoing

education for all registrants. Under self-management, we believe we can move quickly to achieve this goal. I think everyone would agree that enhanced education standards for both new and existing registrants will improve the level of service that we can offer the public.

Second, OREA will be recommending to the administrative authority the creation of a new consumer compensation fund to replace the existing bonding regime. When our recommendation is adopted, consumers can look forward to a vastly improved protection should anything go wrong in a real estate transaction.

Third, OREA will be recommending to the administrative authority that parts of our existing code of ethics and standards of business practice be included in the administrative authority's bylaws and regulations. This means that all registrants, not just OREA members, must abide by these codes and business practices.

Finally, we believe the administrative authority should move quickly to establish improved discipline and enforcement procedures. At present, the registrar of real estate takes disciplinary action against a registrant through the Commercial Registration Appeals Tribunal, otherwise known as CRAT. Unfortunately, that approach has a number of limitations. The most serious flaw in this system is the all-or-nothing approach to discipline. Simply put, CRAT may revoke a licence or let the registrant off scot-free. There is no middle ground.

OREA will be proposing to the administrative authority a completely new discipline and enforcement scheme that will provide for a range of penalties that can be imposed, including fines, licence suspensions, restitution orders and more. In this way, the administrative authority will be able to make the punishment fit the crime.

On that subject, let me point out that organized real estate has a long history of policing its members and its own activities. There are 48 real estate boards, one in virtually every major community across this province. Each one of those boards has a professional standards and discipline committee, charged with the responsibility of ensuring that its members abide by our code of ethics and standards of business practice and that they conduct themselves in an honest and ethical manner. This voluntary discipline system has benefited consumers for decades and it is proof positive that the real estate profession is harder on its own members than groups like CRAT ever were.

Finally, self-management will allow for quicker and more flexible decision-making than existing government mechanisms. As a result, when marketplace requirements change, the administrative authority will be in a position to react quickly and efficiently. This means that new trends in agencies can be addressed, new standard forms can be published and new education requirements established without the necessity of regulatory or legislative change.

Mr Wood: Ladies and gentlemen, we have read a lot of material with respect to Bill 54 and we have read some of our comments on Bill 54, as recorded in Hansard. We know about a concern among some of you that self-management will somehow lead to decreased consumer protection and that, as one individual put it, you're putting the fox in charge of the henhouse.

I don't know what we can do to lessen the fears of those whose opposition is ideologically or politically driven, but let me state the following: Next year, the Ontario Real Estate Association will celebrate its 75th anniversary. Our association was founded to lobby the provincial government to introduce legislation for the real estate business. We believed that legislation was necessary then in order to protect the public from a very few unscrupulous individuals and to provide for an efficient operation of the marketplace. Please note that it was not the government of the day that initiated that legislation and it was not introduced as a result of consumer complaints. Rather it was the industry making a proactive effort to protect consumers and to regulate the activities of the business.

Since that time, organized real estate, through its professional standards and discipline committees, has taken a far more active role in policing its own members than any government ever did. It was OREA which imposed education requirements on its own members. Government simply adopted the standards as their own, and only at our urging. We believe that our record in consumer protection is excellent and we pledge to set higher standards under self-management.

Bill 54 will be seen as good legislation in the years ahead and we urge you to pass it.

That concludes our opening remarks. We'd be pleased to attempt to answer any questions the committee may have.

The Chair: We have one minute per caucus, and we'll start off with Mr Kormos.

Mr Kormos: I want you to understand I'm not in any way ideologically or politically driven. I have no quarrel with real estate people. That's probably because I wasn't talked into buying a downtown Toronto condo in the early 1980s as an investment. But you heard the minister, here, say that there's going to be no effective reduction — this is where people are going to jump up howling if they think I've misstated the case — in the revenues that the province obtains as a result of it being in this business. You're one of the biggest ticket items. There are revenues, in your case, of some \$2.5 million, net revenues. Norm Sterling says that's not going to be effectively impacted, yet you're talking about educational programs, you're talking about a plethora of devices, all of them very positive quite frankly, that are going to be funded as a result of your capacity to charge back to your members, your ability to raise money through licensing. Mr Sterling suggests that some poor real estate broker or agent from small-town Ontario or a big city is going to get hit twice; once to keep the public coffers maintained with some homeostasis and the other, second, to keep your programs paid for. How could it be that that wouldn't happen?

Mrs LeRoux: I'm not really sure how that can be. What we are to understand is that the revenue that is generated by the real estate profession in Ontario will remain within the industry, which is not what is happening at this point in time.

We have lobbied for many years for many changes to take place, some of the changes which I've outlined today, and we have not been successful in getting those

changes enacted. We are hoping to be able to bring about some of those changes as a result of the legislation that we're talking about today. We believe that we will have the funds that are generated within our own industry with which to do that. We realize there will be a certain amount of money which will go back to the government for the quality assurance role which they will maintain, but we anticipate that the bulk of those funds will remain within the industry.

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The Chair: You have one minute, Mr Flaherty.

Mr Jim Flaherty (Durham Centre): Good afternoon. Some people with respect to this legislation —

Failure of sound system.

Mr Wood: I would tend to think that, as we established some 75 years ago with our association, our endeavours have always been there to protect the consumer and to do a good, proper job of a professional nature. In the present administration of the act there are some areas that do not allow for proper investigation, due to the lack of funding maybe to some degree, in our implementation of investigation of infractions. We see that that will in fact help us and we just believe that it is good business to have a respectable profession and that consumer protection is always at the forefront of our business.

Mr Kennedy: I'm wondering then, in the interests of that last statement, if you would comment. In fact if you look at the direct costs associated with current regulation, your industry will be getting back four times as much money as the government currently expends, and I'm wondering what assurance you can give today that that money will all be spent in the pursuit of the objectives which you've said.

Further, on the idea of having an effective majority to disinterested parties so that if this does proceed, it could proceed with public confidence because there is apparently some transfer of government dollars involved here, I'm wondering what response your association would have to that idea because it would take your concurrence because you would have the majority on the board and you would have to appoint one or more of those members. I wonder if you could address those two points for us today.

Mrs LeRoux: First of all, from a point of view of the amount of money that the government currently collects and the amount of money that is expended, I'm not at all sure that that includes all of the indirect expenses that are involved with the administration of our act. I understand that the expenses that were given here would probably be the direct expenses, but they don't perhaps take into consideration the cost of the premises and all of the other heating costs and all of those kinds of costs. The direct expenses such as the salaries and things are probably more what is referred to.

But having said that, we believe, as our association has, we have endeavoured for the last 75 years and in particular the last 50 years to improve consumer protection wherever we could at our own expense. We have been able to achieve that as a result of some of the comments the minister made with regard to the number of registrants and the number of complaints that are generated from the public. We believe there can be

substantial improvements to that and we hope to effect that with those additional funds.

One of the things you may be interested in is the fact that we currently have a \$5,000 bond, which is the only consumer protection in place in the current legislation in the event that a consumer has a problem as far as monetary amounts go. Now again, that is part —

The Chair: Excuse me, Ms LeRoux. Our time is up. I thank Mr Wood, Ms LeRoux and Mr Flood for attending today, for your excellent presentation.

PARAMOUNT CANADA'S WONDERLAND

The Chair: I understand that the next presenter will be out of order, Mr Flatt of Paramount Canada's Wonderland, who is to have a birthday with his daughter today, I understand.

Mr Russell Flatt: A graduation.

The Chair: Oh, graduation. Thank you to Mr Cox and Mr Duffy for their understanding in letting him go first. They'll be appearing in his slot later on. If you would proceed, Mr Flatt.

Mr Flatt: I'd also like to thank them. My daughter will appreciate it too.

Good afternoon. My name is Russell Flatt, vice-president of maintenance and construction of Paramount Canada's Wonderland. I'm here today to express Paramount Canada's Wonderland's support of Bill 54, the government's initiative to delegate the administration of certain designated statutes and in particular the Amusement Devices Act and its associated regulations to its designated administrative authority.

As background, I've sat as a member of the amusement devices advisory committee working in consultation with the technical standards division of the Ministry of Consumer and Commercial Relations in the development and implementation of amusement device regulations and I continue to participate on the amusement devices industry council.

The most important thing we do at Paramount Canada's Wonderland is provide a safe experience for our guests. A comprehensive safety program exists which includes 35 full-time mechanical-electrical maintenance staff with an annual budget of \$3.5 million, implementing a program of daily, weekly, monthly and annual preventive maintenance functions and inspections. This in conjunction with the training and development of 500 seasonal ride operators establishes the foundation of a safe operation.

Third-party inspection of the rides by independent professionals recognized in the amusement industry is another cornerstone of our safety program. With the introduction of the amusement devices regulations in 1986-87 an additional layer of inspection and engineering certification was added to ensure guest safety.

Consistent with our support of the legislation and regulations in 1986, we again support legislation which provides opportunities to ensure public safety through private sector administration of existing standards and policies. We share the view that this proposal will facilitate improvements and efficiencies in the delivery of services in a cost-effective manner while providing the high standard of public safety expected in the province.

The administration of amusement devices standards and policies, whether left intact or delegated to a new authority, continues to face ongoing challenges. Annual ride inspections must remain top priority.

Emerging amusement device technologies are creating experiences which are higher, faster and more intense. Engineering review and certification of these technologies will require an increased level of technical expertise. Since all of these new technologies and in fact all rides are manufactured on the international market, harmonization of codes and standards on a national as well as international basis should be an important goal.

The highest level of public safety must be delivered in the most cost-effective manner possible and the amusement industry must remain an active participant in the ongoing business of policy-setting and standards review.

In conclusion, the current process is working well. However, the proposed legislation presents opportunities for improvement. Regardless, safety is always the most important thing we do.

The Chair: Thank you, Mr Flatt. We have approximately three minutes per caucus.

Mr John L. Parker (York East): During second reading debate, there was some concern expressed from the other side of the floor regarding the level of safety inspections that would be carried out on amusement rides. The concern was that if the industry was inspecting their own rides, we couldn't count on them to carry out the number of inspections or to be as diligent as independent government inspectors would be. Can you comment on that and tell us what you foresee if the industry is responsible for administering its own safety standards?

Mr Flatt: Sitting on the committee and going through the writing of the regulations, there was a lot of discussion about — if you want to call it — the bureaucracy, the technical dossiers and all the engineering parts of the regulations, but what continued to come from the amusement industry was that regulations were critical, that really if all they did was inspect, that would be enough for a lot of the members of the industry.

I believe that those members, and it is a relatively small group of owner-operators in the province, will insist on inspections. I think it is really the cornerstone of all our businesses and I think they will insist that that either remain as well as it is or hopefully improve.

1730

The Chair: One minute.

Mr Frank Klees (York-Mackenzie): Could I just follow up on that? When you say the industry would insist on inspections, are you looking to the industry to ensure that those inspections continue or are you still looking for the government to play some role in terms of an audit?

Mr Flatt: I believe the government's role is in setting the regulations, and it's fairly well prescribed in the things that we have to do. Basically there are manufacturers' manuals and things we have to do on a weekly, daily and annual basis. I think those inspections will continue, whether it's through government or private industry, as long as there's somebody looking to make sure that we're doing what we're saying we're doing. Again, the daily inspections, regardless of who does the yearly or annual

or twice-annual inspections, will come down to how well the daily inspections are done by the people who go out each day: the maintenance mechanic and the ride operation staff who check out a ride each morning.

Mr Crozier: Very quickly, you've said that the current process is working well, and I may be paraphrasing, but you said you can see room for improvement. You've been part of an advisory committee to government. Why couldn't the improvement be made through the current system if in fact the current system is working well and you just want to make it better?

Mr Flatt: I'm not saying that it couldn't. I believe it could go either way. I believe the best way is through private sector involvement. These are relatively new regulations and we're going through the evolution process of inspections and certification of rides. We've only done this now for six or seven years. Being a three-months-a-year operation, it's not like this is an ongoing process that happens every day. We shut down for seven or eight months a year and then we start up each year. So it's a relatively new process that we've been going through and I believe it is working well. I believe there is room for improvement, but it could happen in either case. We at Canada's Wonderland just believe the private sector is the best route to do that.

Mr Crozier: Do you think Canada's Wonderland, being professional as it is and as large as it is, could operate with just self-inspection?

Mr Flatt: Currently we do not do just self-inspection. We have always done a third-party inspection and we would continue to do that regardless. So I would say the answer to that would be no. We believe it is necessary to have additional inspections to keep perspective. Sometimes it's the old forest for the trees — you look at this every day. It's good to bring some new people in. We have three or four outside independent people whom we use who are recognized in the industry, so we would continue to do that. Regardless, we would always have more than our own internal inspection.

Mr Kennedy: I wonder if you could comment on the difference between an operation of your size and the impact this might have on smaller proprietors of amusement devices, and further, how you would characterize the tensions that must arise from time to time between the government inspectors and your operations or smaller operations and to what extent you can tell us about that interaction as it currently exists — so two questions there.

Mr Flatt: I'll do my best. First of all, I can't answer for that small operator. I've dealt with them for many years, and for the travelling shows it's a little bit different situation. I'll make this general comment, though, on the people I've dealt with and the small operators I've come across: I believe this is their business, just as it is our business, and safety is our business. We happen to operate rides, but safety is the business. I think these people are very dedicated to doing their winter overhauls. They own the equipment, and I think as you would well know, any accident on a piece of equipment, whether it's for us or a small operator, would put them out of business. So I believe safety, without inspection of either agency, will always be at the forefront of their minds.

I believe the system is working well with the government inspectors and would continue in either case. I don't believe there's that much friction on the inspection end of the regulations.

I would comment that if there's a concern, and I don't want to speak for small business, I believe it's the engineering and the paper criteria, that technical dossier that we talk about in regulations, that they believe is onerous. I don't believe the concerns deal with the inspections of the rides, because in any case my understanding is that in the jurisdictions they were going into and municipalities they were facing inspections even prior to the regulations set out here.

Mr Kormos: Certainly a large operator, a deep-pockets operator, is motivated by self-interest in ensuring that its rides, its machinery is as safe as possible. That's why the interesting contrast between a small operator, where there may not be those same deep pockets — I'm talking about the access to compensation for an injured person. It may not be as valid.

The minister earlier today talked about the red tape that was going to be cut by virtue of this bill, Bill 54. In your business, what kind of red tape do you contemplate being relieved of?

Mr Flatt: That's a good question. Again, I would state what I said just a few minutes ago about the small operator and the technical dossier. Back in 1985 or 1986, as we prepared for the implementation of regulations — and again, because we have deep pockets, so to speak — we went out and hired an engineer specifically to handle that red tape. For the small operator, obviously that could be a problem if they didn't have the financial wherewithal, possibly, to hire either a consultant or a staff member to handle the red tape. That could be some of the red tape that we would be talking about.

Mr Kormos: But how do you see the degovernmentalization of this type of regulation reducing any red tape in the instance of your industry? How's it going to be different with the proposed regulatory body in contrast to the current system in terms of red tape?

Mr Flatt: I can't answer that.

Mr Kormos: Obviously I've come from the point of view that my suspicion is that you're going to have to jump through the same hoops regardless of whether the regulatory body is government- or industry-based.

Mr Flatt: Again, in the regulations, most of this is prescribed, so that's probably true. Regardless, we will have to fill out the documentation, the certification, the technical dossiers. Hopefully that can become streamlined, especially on similar rides. Especially on an older ride, that would be simplified. But I guess that remains to be seen.

Mr Kormos: Is there any generalization as to where most of the equipment comes from in your business?

Mr Flatt: I would say the majority of the major rides, at least in our park, come from Europe. Smaller rides and some of the travelling carnival rides would come from the United States, but most of the major rides in our park come from Europe, primarily Germany and Switzerland.

Mr Kormos: The reason I ask that is because my next question is, is there any national standard that an offshore manufacturer has to meet before that product can be

imported into the country and used in a commercial exercise like yours?

Mr Flatt: A national standard: There is the CSA and there are the Ontario regulations. For example, we have a ride from Japan, which meets the Japanese Industrial Standards; the German rides meet a TUV standard. Through the process of filling out this engineering technical dossier, there would be a comparison done between the standards, say the TUV standards versus the Ontario standards, and we would have a local engineer who would certify that they are comparable. I would say they do meet the national standards and do meet a number of international standards.

1740

Mr Kormos: Are some —

The Chair: Thank you very much, Mr Kormos. Our time is up.

Mr Kormos: The next question was just right on the tip of my tongue.

The Chair: I'm sure it'll be asked somewhere later on today. Mr Flatt, thank you very much for your presentation and congratulations on your daughter's graduation.

Mr Flatt: Thank you.

The Chair: Our next presenter is Mr David Rappaport, vice-president of Local 591, OPSEU. Is there someone here representing Local 591 of OPSEU? Well, perhaps they've been delayed.

CEC SYSTEMS, ELCAN ELEVATOR, TRI-CROWN

The Chair: We will proceed then to CEC Systems, Mr Ernie Cox, and Mr Kevin Duffy, president of Elcan Elevator. Are they present? Could you identify yourselves for the purposes of Hansard?

Mr Kevin Duffy: I'm Kevin Duffy from Elcan Elevator. With me is Ernie Cox from CEC and Mr Al Lockyer of Tri-Crown.

The Chair: Please proceed.

Mr Duffy: Good afternoon, Mr Chairman, ladies and gentlemen. Thank you for the opportunity to appear in front of you. I would like to commence by reading from the Policies and Procedures: Elevating Devices Mechanic Licensing Program, a copy of which is attached to my presentation.

"A. Introduction:

"The policies and procedures have been developed and adopted by the Elevating Device Mechanic Board operating under the authority of the director under the Elevating Devices Act.

"The policies and procedures pertaining to the elevating device mechanic licensing program and the method of their application and administration are set out on the following pages. The intent is to provide a set of reference points and guidelines for the training delivery organizations, examination bodies and/or administrators involved in the training and certification process.

"The policies and procedures must be followed by all training delivery organizations wishing to have their programs recognized by the board.

The policies and procedures are subject to change and enhancement as required.

"Training administrators shall not alter any of the policies and procedures set out in this document without

the knowledge and prior approval of the Elevating Device Mechanic Board and the Ministry of Consumer and Commercial Relations — Technical Standards Division."

It is very obvious from the preceding that this interim board has been granted a great deal of power to implement control over the elevator industry.

The major problem is that the union sector is heavily represented whereas the non-union sector may possibly have one and only one vote due to the fact that the CECA organization represents both union and non-union companies. The majority of the non-union companies in Ontario are not represented by any organization.

The first knowledge any of the non-union companies had of what was transpiring at the interim board level was disclosed at a meeting held on June 6, 1996, by CECA, to which many companies were invited as guests of CECA. It was at this meeting that the non-union companies discovered who was on the interim board. We, the non-union companies, feel that this board will not act in the best interests of our companies.

The board has the power to approve or disapprove of our instructors, our education programs, as well as any changes we wish to implement in an administrative capacity regarding the elevating devices mechanic licensing act.

The ultimate power granted to this board could lead to the demise of the non-union companies in a short period of time because the union and the unionized companies are overwhelmingly represented, whereas non-union companies may have at present only one vote. We feel that the non-union companies deserve equal representation on the elevating mechanic board.

It is also our opinion that the grandfather clause, presently set at five to 14 years' related experience, should be changed to between seven and eight years. All present mechanics between five and seven years' experience should have to write the government-supervised exam, with no exceptions. The government must certify all elevator mechanics in the five- to seven-year category.

In closing, I would urge this committee to delay the passing of Bill 54 until the concerns of 30% of the elevator industry have been addressed in a fair and just manner.

I have attached on the back the voting list of this present interim board and also my introductory. Thank you. Mr Cox will speak next.

Mr Ernie Cox: Good afternoon, ladies and gentlemen. My name is Ernie Cox, owner and operator of CEC Systems which, again, is an unaffiliated elevator company.

The implementation of Bill 54 will disfranchise a large section of the elevator industry. The threat comes not only from the act but from the selection of representatives chosen from industry to implement Bill 54.

Independent elevator contractors have just become aware that their interests, throughout the negotiation process, have not been represented.

Independent elevator contractors represent a significant portion of the labour employed by industry in Ontario, either directly or through local suppliers and subcontractors dependent on us for their livelihood. Approximately 30% of the work done in the elevator industry is

performed by the independent contractor. We are currently organizing an association to represent our interests. A committee representing independent elevator contractors has been appointed to address the impact of Bill 54.

We urge you, the administration of justice committee, to listen to our concerns and recommendations. The Ministry of Consumer and Commercial Relations has until now administered the Elevating Devices Act and the codes adopted under the act in a fair and impartial manner. There has always been recourse to resolve disputes over the interpretation of the codes. There has always been equal treatment for all contractors, those affiliated with the union and those who are independent. This was accomplished by assuring that the administration of the act was by a third party, government, which made decisions for the betterment of the entire elevator industry. Bill 54 changes that process.

We, as independent contractors, have no assurances that we will continue to have equal representation under the law. We are asking for an amendment stating that whenever there is representation from the industry, the representation must include equal representatives from both union-affiliated and independent contractors, that representatives from labour include equal representation from union employees and independent elevator contractor employees. Respective representatives should be chosen by a consensus of the contractors and not appointed by a board of committee representing either government or industry.

The second item concerns certification of mechanics. Presently, the term "mechanic" is defined under the Elevating Devices Act. There's a page there.

The necessary reorganization of boards and committees preparatory to the implementation of Bill 54 has permitted views and representations to be made which do not reflect attitudes of most independent contractors. In regard to certification, Bill 54 changed the direction of a committee we thought was established to define curriculum and recommend implementation procedures for industry approval into what appeared to be a self-serving tribunal setting standards and judging the qualifications and training of existing mechanics. We feel that equal representation would have promoted a balanced view.

The development of a curriculum for training new entrants into the industry is now completed. However, there are no regulations governing the process of implementation of certification. Under Bill 54, we are requesting an amendment so the process of certification of mechanics does not come under the Elevating Devices Act. Existing government regulations can ensure a fair, equitable transition process for certification. The Trades Qualification and Apprenticeship Act at present contains all of the necessary elements to ensure both the union-affiliated and independent interests are addressed. Again, we are seeking fair representation.

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The third page has a list of the affiliated contractors which represents 28 of the 500 listed.

Page 4 is an overview.

Page 5 is a system already set up — Trades Qualification and Apprenticeship Act — which is OTAB.

Page 6 is the Elevating Devices Act.

We have section 12 and we're already regulated by B44 code, CSA.

I'll pass it on to Al Lockyer.

Mr Al Lockyer: No, it's okay. I'm ready for questions.

Mr Crozier: Welcome, gentlemen. I want to emphasize and just get your confirmation, but 30% of the work done in the elevator industry is performed by independent contractors, a pretty significant portion of the work. I did look at some information a few days ago where the grandfathering clause was not applied equally to non-union mechanics the same as it was applied to union mechanics. In other words, it was more difficult to qualify under the grandfathering for a non-union mechanic. Correct?

Mr Cox: Correct.

Mr Crozier: What you've suggested today then is a solution to that problem, and that is to take the certification right out of Bill 54. Could you confirm for me that the Trades Qualification and Apprenticeship Act, as it presently applies, would treat both groups equally?

Mr Cox: Yes, they would.

Mr Crozier: That's fairly simple. How long do we have, by the way?

The Chair: You've got about 30 seconds to go.

Mr Crozier: I don't think there's much more we can solve in the 30 seconds, but I felt after having read that information a few days ago I have no idea whether it was the government's intention to treat one group, one class, differently than another or not, but perhaps we can find that out when it comes to proposing some amendments to this legislation.

Mr Duffy: The way it's presently set up is the people who have been in the trade five to 14 years — if you're a non-union mechanic you would have to write a government exam but the union member would not because he has gone through some classes in the unionized school. My contention in my brief was that if the non-union sector has to write a government exam although the union companies have been through some schooling process, they should still have to write a government exam. If we all have to be approved by government, let's all be approved by government.

The Chair: Mr Kormos. You've got about three minutes.

Mr Kormos: I tried. The government's been touting Bill 54 as saying that it's going to cut red tape for business. Now, in the elevator area, what red tape would you anticipate being cut, if any?

Mr Duffy: The way it's generating profits right now, I don't anticipate any red tape being cut.

Mr Kormos: Where is the red tape now?

Mr Duffy: If you want to change anything on an elevator, you have to submit at least the minor B alteration, and along with that minor B alteration, for every alteration you want to make and fill in, it costs you \$65. The wait for the return confirmation, "Yes, you can go ahead with that work," is substantial. Plus, if you're a small company, you ought to hire an engineer to approve your work and to submit it to the government. The red tape is quite substantial, and for the safety to the general public I think this system will have to continue. We're a

very heavily regulated industry with inspections and I wouldn't like to see that stopped.

Mr Kormos: So nobody at the end of the day is going to be saving any money as far as you can tell now.

Mr Duffy: No, I think earlier, a few years back, yes, we were short of inspectors in the industry. That's been corrected and I think the Ontario public can be well protected by what's going on right now. But my argument is not with the bill itself. My argument is with the representation that we as a company do not have, and I think that's what we are after here.

Mr Kormos: I saw the addenda, the appendix of that list to the Elcan submission. That list is the voting list out now. What was their input, as far as you're aware, to the legislation?

Mr Duffy: When it comes to the Elevating Devices Act, this interim board has laid everything out for us, but we as a group had no idea what was going on behind closed doors. A few people did know what was going on.

Mr Kormos: Neither did the Tory caucus.

Mr Duffy: Neither did we, and now when we look at it, if the union and the non-union companies were to get together, they could actually put us out of business. They control the education program. If they didn't want our education program to be accepted, they could refuse it. Therefore, in a number of years down the road, we would have no mechanics. The union companies would take back our contracts. The union's labour force would increase because our workers wouldn't be allowed to work. This is our main concern. We would like to have equal representation on that board to control our own industry and have an input and a say about the industry. Right now we do not have it.

Mr Flaherty: I understand that the concern about the union domination arises out of the interim advisory board that was dealing with mandatory training and certification. Bill 54 has nothing in it about mandatory training or certification, but I understand the concern, where it comes from, because of the history of the board. The interim training board of course is temporary, not permanent.

In Bill 54 there are a couple of specific provisions. One provides that the minister may appoint a minority of members of the board and the other is, perhaps more importantly, the development of the business plan as part of the administrative agreement with the particular group, in this case the elevator section. Can you work with those provisions in terms of developing a fair business plan that would represent the independent contractors as well as the unionized forces?

Mr Lockyer: I'd like to answer that. The way this whole process has come about in the elevator section — we realize this is only a small section in Bill 54, the elevator section. However, the pyramid to Bill 54 is being built from the bottom up in the elevator industry, and the interim board that has been set up by the association I'm a member of was set up as an advisory board to come up with an education plan for the elevator industry, which it did. However, that board now has been set in the power position of becoming the so-called board. As we can see, the director of that board will become the director answering to the Bill 54 committee when it is involved.

The problem we see is that with the speed this bill is being pushed through, we have no way of stopping this board from being empowered, because by the end of August this board will have every possibility of being empowered by the minister or the different people who become in control of that circumstance.

The splitting of the industry, the splitting of the union for safety — this Bill 54 is all to do with public safety, and yet the splitting of the union would indicate that somehow or other the non-union section has been recognized as being the unsafe section, and yet if you look at the four major accidents that have happened in the last six years — two in Ottawa, one in Hamilton and the one in Toronto — all four of those were directly attributed to the union section.

We don't have the information as to what companies are the most unsafe companies, but I suspect it is the union section. The non-union section, because we are owner-operator, is probably more aware of safety because it can take us out of business and thereby lose our homes and everything else.

Mr Flaherty: The concern is fair representation on the administrative agency.

Mr Lockyer: Yes.

The Chair: Gentlemen, thank you very much for your presentation.

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CANADIAN AUTOMOBILE ASSOCIATION — ONTARIO

The Chair: The next presenter is the Canadian Automobile Association, Ms Mitchell. Welcome to the committee.

Ms Pauline Mitchell: My appearance here will be even briefer than I had originally intended. We came here this afternoon to raise our concerns about a very significant portion of the Travel Industry Act that we understood was going to be repealed under Bill 54. A few of my colleagues sitting in the audience helped make me aware this afternoon that section 28 of the Travel Industry Act is in fact different than regulation 28 in the same act. Our intervention today was intended to defend the rights of the consumer by objecting to a repeal of that section alone.

I've been assured here this afternoon that regulation 28 will stay, and that a repeal of section 28 — it's pretty confusing when you're reading the act — is merely a housekeeping matter and we're now satisfied that the travel consumers will retain their protections as originally agreed to in the Travel Industry Act.

I won't take any more of your time unless you have questions. I can't imagine what they might be, but if you have some I'll try to answer them.

The Chair: Possibly we might find one for you.

Mr Kormos: What are the red tape hurdles you have to wind your way around?

Ms Mitchell: I can tell you of a couple here this afternoon. There's a lot of red tape in the numbering of sections and regulations.

Mr Kormos: Trust me, that's never going to change.

Ms Mitchell: That's about the only red tape I have encountered here this afternoon.

I have a colleague here with me today, who I think stepped into the hall, who's been involved with the travel industry for a much longer time than I have, and if I could send someone out to drag him in, I'm sure he could give you an example of some red tape.

Mr Kormos: What's his name?

Ms Mitchell: Mr John O'Neill.

Mr Kormos: What are we talking about in terms of the burdensome red tape you face in the travel agency business? I'm trying to get a handle on what kind of red tape is going to be eliminated by virtue of Bill 54. What kind of red tape obstacles do you find in the travel industry?

Mr John O'Neill: At the present time — I wasn't aware of what section we were talking about originally.

Ms Mitchell: Oh, no. We're now on to just plain red tape.

Mr O'Neill: I don't believe that there is a lot of red tape. We file once a year and we have to go to pay our bill for the compensation fund. That's it. There's not a lot of red tape.

Mr Kormos: So in your case the purpose of privatized regulation surely can't be in the interest of eliminating red tape because you saying there ain't none.

Mr O'Neill: Yes.

Mr Kormos: Okay. You know that the government makes money, generate some net profits in the regulation of these various industries. You know that, don't you?

Mr O'Neill: I was not aware of that; sorry.

Mr Kormos: Heck, in the case of your industry some people swallowed their bubble gum to learn that the government spends \$287,000 a year, but brings in \$400,000 a year from your industry in terms of various licensing fees, I presume, and annual costs. So that's a net profit. Nowhere near as much as it makes on real estate or motor vehicles.

The minister today told us that he didn't expect to see any substantial drop in the net revenues for the province. He did.

Mr O'Neill: Okay, I believe you.

Mr Kormos: You're going to be expected to fully fund, as an industry, this new regulatory body that's industry based. You're aware of that?

Mr O'Neill: Right.

Mr Kormos: The government doesn't expect to pump any money into it?

Mr O'Neill: Okay.

Ms Mitchell: I would say, if I can answer on Mr O'Neill's behalf, we are aware and we're members of associations that are involved with consultation in the move towards self-regulation. I think those associations are still on the journey in terms of determining how all of this will unfold, and I think at this stage of the game, Mr O'Neill is pretty much on the front line of service to our members and to other consumers; I don't think he's had that level of involvement in the discussions to this stage.

Mr Kormos: I suppose I'm merely indicating that every indication today is that your industry, like the other regulated industries that are the subject matter of Bill 54, is going to end up at the end of the day paying more, not less, because the government indicated quite clearly that it expected to maintain the current net revenues and at the

same time to call upon you to fully finance, admittedly on a not-for-profit basis, yet a new regulatory body, this time privatized.

There's something here that simply doesn't add up. You and the people in your industry better be pretty concerned about the flimflammy and the game that's being played out right now, because you can't have it both ways. The government can't maintain these revenues unless it charges you the same sort of fees or bleeds out of you the same sort of cash flow that it has been. It can't at the same time maintain revenues without doing that, and if you're going to fund your own regulatory agency, you're going to have to pay for it. It's going to come out of your chequing accounts, your current accounts and your various businesses, so you guys are going to get hammered twice. So caveat emptor, as they say.

Ms Mitchell: I think our entire interpretation is that in defence of consumers — travel agencies are consumers of travel products themselves — we'll have to be very aware of all of the new developments and —

Mr Kormos: I'm trying to get a handle on — the big fundamental question is, why? Why would the government want to get out of the business of regulating the travel industry? Because it is important to consumers, isn't it?

Ms Mitchell: It's a very big industry where people count on service, reliability and —

Mr Kormos: Integrity.

Ms Mitchell: — integrity.

Mr Kormos: It's one of the big ticket purchases by most individuals or families, isn't it? First the house, then the car and I suspect travel may well come third in terms of laying out money all at one time, isn't it?

Mr O'Neill: It's one of the top ones, yes.

Mr Flaherty: Mr O'Neill, with respect to the motor vehicle dealers and red tape, I gather you're aware that every motor vehicle dealer and the salespeople have to register every two years. It's about 28,000 registrations every two years. We heard that from the assistant deputy minister.

Interjections.

Mr Flaherty: There's something I wanted to ask you about on the motor vehicle dealer's side, if I can ask you that since we're talking about the Canadian Automobile Association. There is an organization called the Canadian Motor Vehicle Arbitration Panel. Is that right? Are you familiar with that?

Ms Mitchell: I'm not familiar with that. I'm sure that there are people within our organization who are. Quite honestly, when we read Bill 54, we found it fairly confusing despite some very good cooperation from the communications branch in supplying us with a great deal of background information. We read nice things about the vision and all the rest of it, but we didn't get too much in terms of very specific information about the 25 different things that were being affected by this bill.

Mr Flaherty: The concept is that with respect to mature industries like motor vehicle dealers, the administration and delivery systems are taken from public servants and moved into the industries themselves because they're fully capable, given their maturity of

managing their own affairs, while government maintains its consumer protection and public safety obligations by maintaining the right to legislate and to regulate. It's just moving administrative and delivery systems and not moving the traditional government powers, the important public safety aspects of it.

That's why I was going to ask you about the arbitration panel because I understand it's a self-management tool that has been very successful for consumers, not only in Ontario but across Canada. I know from my own experience in my previous legal days that people having that sort of dispute with respect to automobile, new cars, can go through that arbitration panel rather than use the court system to their benefit, not only with respect to cost but with respect to expediency, getting a speedy resolution. Are you familiar with that system?

Ms Mitchell: We're more familiar, being with CAA, with some of our own CAA programs. They're very similar to that and are performed for our members by our own association. We have, for example, our auto-approved garages and an arbitration system that would be handled by those elements of our club on behalf of our members. Those are the areas we'd be more familiar with.

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Mr Klees: The minister in his comments earlier indicated that there was a national quality survey that was done and that generally speaking people rated the service from private industry, the private sector, fairly high. About 73% were satisfied compared to about 39.8% consumer satisfaction with government service. Based on your personal experience, would you feel that it's fairly consistent, and has that been your general experience?

Ms Mitchell: We measure the satisfaction rates of our members as they relate to us; we don't ask them to compare it to how satisfied they are with government.

Mr Klees: But I'm speaking generally. Would you say that the kind of service that's delivered by government in general is below that in terms of quality of delivery?

Ms Mitchell: I would say that successful businesses that continue for many years have done so because of the level of service they provide, and there's not a turnover rate of every three or four years.

Mr Klees: Would it not follow then that if we shift responsibility for delivering service into the industry itself, which has a vested interest in terms of how well it performs, the industry would as a result benefit from that shift away from government providing that service to the industry?

Ms Mitchell: I think it's a progressive move, that mature industries are moving in the direction of self-regulation. I think it's probably a symptom of the times that this is a necessary direction for mature industries to be moving in.

Mr Kennedy: What do you think of the concept that for the consumers' confidence, because a great number of your members are consumers — you have a large base, a large membership — consumer-like organizations or other non-industry interest groups, in the sense of not having self-interest, should be an effective majority on these new boards, so that there be some public confidence that there is that arm's length which is intended, if we

understand the government correctly? What do you think of that as an idea?

Ms Mitchell: I think anything that enhances the reputation, the credibility, the reliability of the travel industry is certainly a benefit to all consumers as well as to the industry itself.

Mr Kennedy: Thank you for that. Do you have any comment on developments in the United States? We're seeing states like California and other states re-regulate after having diminished regulation in recent times because of some failures of different kinds of travel endeavours. How has your organization assessed the tradeoff between the confidence that government oversight can bring and that when the industry's looking after its own? I wonder if you could comment.

Ms Mitchell: I think all consumers would like to see it done right the first time, not to have something that comes in and doesn't work and has to be retooled. I think you take the necessary time in advance to setting up the self-regulation. You try to anticipate what the consumers' needs are and the response, and you try to get it right, right from the beginning.

Mr Kennedy: I know you had some trouble getting the right information on this, but are you in a position to comment on whether you think consumers are adequately protected? For example, the majority of the boards —

Ms Mitchell: I think there's a great deal of confusion for consumers. I'm not the only one experiencing difficulty figuring out some of the new developments. When I read this legislation, it then was necessary to go and find the other legislation it referred to. Even with that, I checked with other people in the travel industry to see if I was reading this incorrectly. They picked up the act and said, "Oh, my heavens, if you are, so am I." There were a lot of people within the travel industry who didn't know how to interpret what they were reading. I think it's very dangerous when people don't understand what the changes are and what the changes mean to them.

I leave here today satisfied that regulation 28, which does protect consumers, will remain in place. I arrived here today fearing that it would not.

Mr Kennedy: I'm wondering too, in terms of a more general consideration — I don't know if it's your concern — that in place of elected government oversight, and through that means, do you think there is sufficient protection for consumers in the rest of the bill, or are you not in a position to comment?

Ms Mitchell: I'm not in a position to comment on that, sir.

The Chair: Thank you, Ms Mitchell and Mr O'Neill, for your presentation.

CONSUMERS' COUNCIL OF CANADA

The Chair: Our last presenter of the day is the Consumers' Council of Canada, Joan Huzar. Welcome. Thank you for your patience. It's been a long day for us too.

Ms Joan Huzar: Oh well, eventually I'll get home. It's been interesting. Thank you very much for finding time for me. I appreciate that.

I understand that the committee members have before you our brief, which I faxed this morning to the Clerk's

office, so rather than just read through the whole thing, which you can do at your leisure, I'd just like to highlight a few points — some of them emphasize what's been said before — ignoring totally the plain language thing, which you'll read about and I get into a tiny rage about that's unbelievable.

Consumer representation: For our association it's a firm belief, and I think it's come out in the discussions around this room, that any organization, any group will function better if all the people who are involved are there at the table — on the board of directors, developing the regulations, whatever. We would argue very strongly that consumers — because consumers are the end users of all these services — should be there. We would like the legislation stronger, that the minister "shall appoint," as opposed to "may," but that may just be my own particular paranoia.

From a personal perspective, I sit as one of two consumer representatives on a 15-member board. We get voted down on occasion; not very often. It's better than nothing. I'd like to see it larger, I'd like it to be a majority, but that ain't going to happen, so I'm prepared to be assured that there will be substantial consumer public interest representation. I guess I have to believe the minister and the ministry when they say that will happen. I look forward to participating in that kind of a process.

Along with that goes the idea of a balanced board, because consumers aren't the only people who are there besides the industry. There are others. There's government, there are perhaps municipalities, banks, there are all sorts of other groups that can be involved in a particular industry. A balanced board, taking into effect all those industries, will do better for that particular industry.

Consumer education I can't talk enough about, because I think that's critical to the way anything is going to work. Consumers have to understand. They have to know how to use products safely. They have to know how to ask the right questions of their travel agent, whatever. It's an ongoing process. It takes forever. If anyone had found out how to do consumer education, we would have solved the problems of the world and nobody has yet. It costs a lot of money; you have to do it all the time. I was really pleased when I thought I heard the minister say that these agencies will have their own dollars and I hope a lot of those dollars would be put into consumer education. There were references to industry education and I'm hoping that consumer education — even in the safety aspects, there are a whole lot of consumer aspects of that as well that need to happen. I see the potential for more consumer education there and I hope that will happen.

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The whole area of accountability is one that concerns us as an association because I think consumers want to feel that whatever organization is organizing the business they're dealing with, there is some accountability. I'm not sure government is always wildly accountable, but what can we say? I've seen instances where governments have ducked very nicely by passing it off to somebody else.

We made a passing reference in here to CRAT carrying on as an area of appeal. We didn't see that there was an appeal mechanism there. CRAT may not be the

answer; something like that. I was interested that one of the other groups — the real estate people, I think — made reference that it had a suggestion. We put forward CRAT because it's there. It has problems, but it works and it's accessible to consumers. To say, "Go to court," is simply not for consumers. We would like this whole thing to be as independent from government as possible, so that an agency doesn't get tied up with the politics of the day. That's not the way to make this thing work.

I'll let you read. I could go on forever, but I'll stop and answer questions; I will do my best.

Mr Flaherty: In terms of examples of self-management, I gather you're familiar with the Ontario New Home Warranty Program; in fact you sit on it.

Ms Huzar: Yes, I'm the vice-chair.

Mr Flaherty: That's an independent agency.

Ms Huzar: Yes.

Mr Flaherty: It's a good example of self-management. You mentioned education also. How do you find the Ontario New Home Warranty Program has worked in terms of its education function and as a self-managed operation?

Ms Huzar: I think it works very well. Actually, it's an interesting example, because as you may or may not know, there aren't very many houses being built in Ontario these days, so there isn't a whole lot of money to run that organization. That's one of those little concerns I have: that in the boom times there's lots of money for an industry to run itself; in the bad times, there isn't lots of money. The industry, my experience is, tends not to want to raise fees. So what do they cut? They cut those things that they perceive to be expendable, and consumer education is right up there at the top. We've just gone through, with home warranty now, a downsizing process. I hope consumer education isn't gone, but it's a concern that it's one of the first things that's going to go.

Mr Flaherty: Right, but that is one of the functions ONHWP took on.

Ms Huzar: Absolutely, yes.

Mr Klees: Thank you for your presentation today. I certainly agree with you in your reference to the need for plain language. As one who has to read these things all the time —

Ms Huzar: My sympathy.

Mr Klees: — I certainly hope that message gets through to the various ministries at all levels.

I also want to express my agreement with the point that you made in terms of the need for the industry self-management bodies to take very seriously the issue of consumer education. What is important in this bill is that there will be the fee retention within the industry. I think probably no one knows better the kind of education that's required than the people who have used it. Certainly our expectation is that a good portion of those retained fees would be used for the benefit of consumer education, which we believe also will then benefit the industry.

Ms Huzar: Absolutely.

Mr Klees: As you made reference to in your brief, consumer confidence has a great deal to do with the success of any industry. We believe that by transferring that responsibility back to the industry and allowing it to

invest its own dollars back in, it will be a win-win situation, both for the consumer as well as for the industry. I'd be interested in your comments.

Ms Huzar: I agree. I read between the lines and I think that's what is intended. Our recommendation is: Please, can we say this in the act? Please, can we not leave this as something that can be in or not in any regulations or bylaws that might happen to be made by an independent body? Please, can we make this one of the upfront, really important things? Because it's hard to change an act. I know.

Mr Klees: You'd be satisfied if at least that were in the regulations or the business plan that ultimately then would guide the industry?

Ms Huzar: Yes.

The Chair: Thank you, Mr Klees. Mr Parker, there really —

Mr Parker: Is there any time at all?

The Chair: Well, 30 seconds.

Mr Parker: I just wanted to register my comment in support of what Mr Klees said, thanking you for your comments with respect to plain language. It's well taken here, and I hope it is a message that gets through not only to the ministries but to legislative counsel. The previous government had an experience where they had to hire a consultant to read one of their own reports to them, and we've got to get away from that sort of confusing language in government.

The Chair: Thank you, Mr Parker. As a lawyer, I've always felt that statutes are written in plain language, but anyway, Mr Kennedy.

Mr Kennedy: I think I'll leave that alone, but my silence is not to indicate concurrence with that idea.

I wonder if I could ask a little bit about the Consumers' Council of Canada. You mentioned that on your board consumers were a minority?

Ms Huzar: No, no. I sit on the Ontario New Home Warranty board as one of the two consumer representatives on a 15-member board.

Mr Kennedy: Could you tell us a little bit about your organization?

Ms Huzar: We're a new organization. We're two and a half years old. We're the classic incorporated, not-for-profit, independent consumer group. We're looking to be selective in the issues that we tackle, issues that are going to improve the marketplace, and trying to do it in a collaborative way, because we don't think you improve the marketplace by just yelling and screaming; you have to get out there and find the areas where things can be done and work with government, work with industry, to try to make it better.

Mr Kennedy: What number of membership do you have, and where does the funding for your organization come from?

Ms Huzar: We are self-funded. We gave up trying to get money out of government — I mean, I gave up trying to get money out of government — a long time ago. That's a whole other story. We do projects, basically, for whomever, working with groups to give a consumer opinion, to government projects if we can scrounge them up, business projects, business joint ventures.

We have a very small membership, and that's the bane of consumer organizations anywhere in the world: Consumerism ain't sexy. It's not like environmentalism.

Mr Kennedy: What number of members? What would that number be?

Ms Huzar: We've probably got 50 members right now, which was my expectation when we started the organization. We've got probably 600 volunteers that we go out to in our volunteer network whom we survey and ask questions of.

Mr Kennedy: I wonder what concerns, on behalf of your members, you have around the financial arrangements concerning this bill. You mentioned approval for education. I don't know if you were here for the part of the bill where it was explained that the real estate industry would receive back something in the order of four times as much money as is currently used to regulate that industry, the motor vehicle industry would get back five times as much money currently used to regulate that industry, and the travel industry would receive back about 50% in addition, on top of what is currently used. Are you concerned about the impact that will have on overall consumer protection and safety? Sorry — the safety organization gets back about \$3 million. Because that money will have to be made up in the ministry somewhere else, either by cancellation of services or by some other means, I'm wondering what your perspective and your organization's perspective would be on those arrangements.

Ms Huzar: This is an impression, this is not based on statistics or any other thing, but my impression is that government is doing less these days, period, and has been for quite a while, certainly in the consumer protection area. There used to be consumer offices around the province, and if consumers had complaints they could go to them and may or may not have gotten help. That was a bunch of years ago. So from a consumer perspective there hasn't been a whole lot happening.

My hope would be that these organizations would absolutely see it in their self-interest to do those things that ought to be done and would use the dollars coming in to them to set up the liability, to fund the compensation funds, do all those sorts of things that provide the consumer protection we need. If a travel agent goes under, I want my money back, thank you very much just the same.

Mr Kennedy: Do you think that these dollars, about \$9 million of public funds that are flowing towards the industry groups being created, should be guaranteed to be used for consumer protection?

Ms Huzar: That would be dreaming in Technicolor if it could all be used for that. The trick of this whole exercise I think is going to be in the regulations, in the actual setting up of the individual groups. The trick, if you'll pardon the expression, would be to ensure that the dollars are spent I guess "appropriately" is the better word, and part of that appropriateness is consumer protection, consumer education, consumer safety, as well as all the regulatory things that have to go on.

1830

Mr Kormos: You indicated you contract work with the government.

Ms Huzar: We have done, yes.

Mr Kormos: Provincially and federally?

Ms Huzar: I don't think we've had any provincial work, just federal. We've done a couple of surveys with the federal government.

Mr Kormos: Do you participate at all in contract work with manufacturers or retailers?

Ms Huzar: We've done some work with retail council. We've done some work with some insurance agents, the insurance companies, and some work with some financial institutions. We pick and choose.

Mr Kormos: Again, that's on a contract basis?

Ms Huzar: That's right.

Mr Kormos: I appreciate your confidence in the industries that are being regulated here, but do you think there's a public perception of evenhanded regulation if you don't have an arm's-length relationship between the regulatory body and the industry it regulates?

Ms Huzar: I guess the reason I have confidence is because I use home warranty as the model where the model that has been set up is an arm's-length group. I grant you the builders form the majority on the board, but having said that, the warranty program does a lot of things that builders don't particularly like and the builders would argue that they are a whole lot harder on them than the builders' association is. So my confidence in the ability of an industry to discipline itself, regulate itself, comes from that experience where the body that's set up becomes a separate entity, and even though the industry in question has input into the board of directors, it's a separate thing out there and it gets its own aura and its own big stick and its — again, I use the example of home warranty, and the builders I talk to, they're scared as hell of it because it's got the power to yank their ticket.

Mr Kormos: What about the red tape angle? That's being used by the government to create some spin around this, saying, "Oh, this will eliminate red tape." How do you see that happening?

Ms Huzar: From a consumer perspective, you have to fill out forms, and I don't know whether that's going to change. The reading I did around this, I didn't see elimination of red tape as one of the stated objectives. I'm thinking back. I don't have it here in front of me, the little beige pamphlet that came out where they talked about — I don't know; it's gone from my head. Red tape wasn't one of them. From a consumer perspective, I'm going to have to fill out forms. I would hope that whoever is organizing the forms can make them as simple and as clear as possible, in plain language.

Mr Kormos: Does the regulatory body have to be a private sector one, albeit non-profit, in order for it to be more effective?

Ms Huzar: I don't think by definition. I think perhaps — I don't know the answer to that question. I don't think there is an answer. I don't know whether there have been studies done that would show that there's an answer to that one or not. I don't know. By definition, I'm not sure, no.

Mr Kormos: So there's nothing you're aware of that would permit us to conclude that the process of self-regulation would in itself provide more effective services to the public?

Ms Huzar: Oh, I think it would.

Mr Kormos: Okay. Explain that.

Ms Huzar: Because as a consumer I'm paying dollars for my, I don't know — use travel. Pick one of those industries. The dollars that industry pays to get its licence and do all those things are then going to be put into this. As I understand the way this thing is going to work, all those dollars are going to go to that regulatory body, whatever we call it, that is then going to make sure that the things I think are important — that my travel agent isn't going to go under or, if they do go under, there's going to be a compensation fund that's going to pay me. They're going to work to make sure that the forms are simple, that I don't have to fill them out in triplicate if once will do, that those kinds of things will happen, and there will be dollars there to do education etc, whereas now, again if I understand the numbers right, it all goes into general revenue.

Mr Kormos: Well, there are profits being made by the government in the regulation of these industries —

Ms Huzar: Then it goes into general revenue and disappears into this vast hole for hospitals or whatever; I don't know.

Mr Kormos: The minister earlier today insisted that those net revenues, the profits being generated, weren't going to be affected in a major way.

Ms Huzar: I have no knowledge of that. I can't speak to that. My assumption is — and that's the way I read the legislation, and I could be wrong, but I'm going into it — that the dollars that any particular industry raises in fees or whatever will be for that industry then to use in the process of its regulation. That would make sense.

The Chair: Thank you, Ms Huzar, for the presentation on behalf of your association.

I am advised by Mr Flaherty that the government hopes to have any amendments they are going to propose in the hands of the clerk by 12 o'clock tomorrow and those will be distributed. I don't imagine the opposition or the third party could do that, but if you can, that would be appreciated, if there are any proposed amendments.

There are no other matters today. We are adjourned till 3:30 tomorrow afternoon.

The committee adjourned at 1837.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Vice-Chair / Vice-Président: Johnson, Ron (Brantford PC)

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*Ramsay, David (Timiskaming L)

Tilson, David (Dufferin-Peel PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Crozier, Bruce (Essex South / -Sud L) for Mr Conway

Flaherty, Jim (Durham Centre PC) for Mr Guzzo

Kennedy, Gerard (York South / -Sud L) for Mr Chiarelli

Kormos, Peter (Welland-Thorold ND) for Mr Hampton

Clerk / Greffière: Donna Bryce

Staff / Personnel: Susan Swift, research officer, Legislative Research Service

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First Session, 36th Parliament

Assemblée législative de l'Ontario

Première session, 36^e législature

Official Report of Debates (Hansard)

Tuesday 25 June 1996

Journal des débats (Hansard)

Mardi 25 juin 1996

**Standing committee on
administration of justice**

**Comité permanent de
l'administration de la justice**

**Safety and Consumer Statutes
Administration Act, 1996**

**Loi de 1996 sur l'application
de certaines lois traitant de sécurité
et de services aux consommateurs**



Chair: Gerry Martiniuk
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Tuesday 25 June 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mardi 25 juin 1996

*The committee met at 1542 in room 228.*SAFETY AND CONSUMER STATUTES
ADMINISTRATION ACT, 1996LOI DE 1996 SUR L'APPLICATION
DE CERTAINES LOIS TRAITANT DE SÉCURITÉ
ET DE SERVICES AUX CONSOMMATEURS

Consideration of Bill 54, An Act to provide for the delegation of the administration of certain designated statutes to designated administrative authorities and to provide for certain limitation periods in those statutes /
Projet de loi 54, Loi prévoyant la délégation de l'application de certaines lois désignées à des organismes d'application désignés et prévoyant certains délais de prescription dans ces lois.

ONTARIO PUBLIC SERVICE
EMPLOYEES UNION

The Vice-Chair (Mr Ron Johnson): Our first presenter today is Mr Tim Little, with the Ontario Public Service Employees Union. Good afternoon, Mr Little. You'll have 15 minutes for your presentation, and you may wish to leave some time for questions at the end.

Mr Tim Little: I'll try to hurry through this then.

It seems appropriate that this particular committee hearing on this particular bill is being held such a short time before the summer recess, for if this bill is passed, the government will be going on a permanent vacation so far as the consumers in the province of Ontario are concerned.

You could call it letting a fox run loose in the chicken coop, but it could be more accurately described as a farmer turning over the entire chicken operation to a group of foxes while the farmer goes on vacation. And just as he leaves, this particular farmer in charge of Ontario is shooting the watchdogs, or at least laying them off.

But not to worry: The foxes are empowered by this bill to get together and form a self-management organization, a committee of themselves to become the watchdogs. They vow not to let any foxes take advantage of any chickens while the farmer is away on permanent vacation. We know the outcome of this story: chickens one day, feathers the next.

This would be funny if it were not so true and if it weren't real people who were going to be victimized with this bill. In farmyard Ontario, the farmer is the Ontario government, you know who the foxes are, and the watchdogs are the people who used to work for the

Ministry of Consumer and Commercial Relations. They're the crown employees we represent in OPSEU whom this legislation so transparently singles out in section 9 of the bill: the crown employees who now have the responsibility to ensure that the people of Ontario are protected from unsafe elevators, inspect the midway rides, audit the fly-by-night travel agencies, and protect the public from a whole host of other hazards that we read about in stories in newspapers that usually end with "The Ministry of Consumer and Commercial Relations is investigating."

Not any more. In anticipation of the quick passage of this bill, the minister has been busy giving surplus notices to scores of employees, everyone from clerks to enforcement officers to audit inspectors. There have been 136 positions eliminated so far this year and we anticipate 100 more before year-end.

We could list the names of our members into the record today. I have them here just to make sure you realize that with the passage of this bill, you're responsible for greater joblessness and the future of real people and their families, dedicated people serving Ontario. We're going to respect their individual privacy, but the fact remains that our families are suffering because their jobs are disappearing, and there will be many, many more layoffs to come.

It's ironic that we have to remind the members of this government, which claims to favour job creation, that when you kill protective regulatory bodies, you're also killing jobs. Your decision to do so directly affects real people who are also taxpayers and who, above all, are working people, not the large businesses that will gain from this bill; people who have spent their working lives protecting the public from wily foxes and those who prey on grieving widows and car buyers.

We know for sure that this bill and its aftermath will destroy jobs. What kind of jobs will it create?

There are foxes out there licking their lips to set up some designated administrative authority that they will control to replace ministry watchdogs. It will need an appropriate name. May we suggest a Better Business Bureau for Foxes? Perhaps you could bring in Paul Tuz to run it.

Will it be enough to replace 50 years of consumer protection and public safety? Can you really turn foxes into watchdogs by passing an eight-page piece of paper into law? Is this government rushing to pass this bill only because it's a convenient and expedient way to cut a few hundred crown employees from the government payroll? We suspect that's the case.

Bill 54 really is a flippant and tawdry piece of work. The legislation specifically targets our members, targets them for the trash bin and devalues the work they do to protect society. Never has a law been so transparent in its attempt to limit the rights of working people, none except perhaps Bill 7.

When all the inspectors, enforcement officers and auditors are laid off, this legislation opens the door to the private industries to regulate themselves in the public interest. That's quite a leap of faith. But the government doesn't have to worry: Even if self-regulation doesn't work and the public becomes victimized, this legislation effectively takes care of any liability you have to protect the people who elected you. So much for your job as protectors of the public interest.

Whom do you turn to when your widowed mother is stiffed out of her prepaid cemetery plot? Do you just call up another undertaker? Who do you call when you suspect they rolled back the odometer on the used car you just bought from a reputable dealer on Highway 7? "Who you gonna call?" Bill 54, where are you?

You'll call it self-enforcement. We call it privatization of enforcement. Consumers will call it a waste of time.

Self-enforcement negates the basic golden rule of private enterprise, one that this government seems proud to drill into the heads of everyone in Ontario. Private enterprise, we're told, operates on the so-called bottom line. Everything must pay its own way. Anything that gets in the way of profit is bound to be sacrificed, downsized or abolished. That's 136 ministry jobs and counting.

1550

Our enforcement system wasn't created in the first place because industry was kind to consumers; quite the contrary. Elevators were not safe. There were deaths on midway rides. Travel agents did go out of business and they have absconded with funds.

What's changed? Widows do prepay through the nose for a six-foot piece of real estate. There are crooked realtors. There are cases to investigate. Protection is needed. The bottom line of profit is not going to be good enough.

Are there really fewer risks for consumers today than there were 20 years ago? Has industry really changed its stripes that much? At least the minister thinks so. According to his business plan tabled in the Legislature a few weeks ago, "Industry members are clearly in a better position than government to understand the needs, responsibilities and pressures of their own sectors."

In our view, those "needs, responsibilities and pressures" can be summed up in a couple of words: higher profits. Isn't that the bottom line for this government? What about the needs and pressures facing the public?

We've got nothing particularly to gripe about regarding profit-making, but we know that the prime responsibility of a company is to its shareholders, not the public nor, particularly, the rest of the industry; they're the competition.

The government intends to regulate these industry self-enforcement agencies by mechanisms such as business plans, annual reports and auditor's reports to the Legislature. But who's going to read them when there are no

ministry employees left? Will the legislators themselves be charged with that duty? The government intends to regulate only by that means: reports to government.

To start this off, the minister has chosen to privatize the regulation of reputable industries where the track record speaks for itself. If engineers, lawyers and doctors can be self-regulated, the minister asks, why not used car dealers, travel agents and real estate brokers? What, me worry?

The minister proposes a new agency to be called the "safety organization," a kind of underworld doublespeak, if you ask us. We suggest that that agency have a warning right on the front door: "Ontario consumers beware. Self-enforcement could be hazardous to your health and to your safety."

In closing, we call on this committee to do the right thing: Don't bother with clause-by-clause; move now to withdraw the bill. You've got to strengthen consumer protection for Ontario, not eradicate it. You've got the public trust in your hands. Don't turn it over to a bunch of cunning foxes, for if you do, all that will be left is the feathers.

The Chair (Mr Gerry Martiniuk): Thank you very much, Mr Little. We have two minutes per caucus.

Mr Peter Kormos (Welland-Thorold): What consultation has the government had with OPSEU regarding the significant displacement of workers?

Mr Little: None that I'm aware of.

Mr Kormos: It was indicated yesterday by the government that they had no idea how many workers this would displace, which indicates to me a real lack of planning on their part. Do you share that conclusion?

Mr Little: Very much so. We know it's in the hundreds. We can only come to the conclusion that the services they provide are considered by this government to be completely expendable.

Mr Kormos: In the three areas of motor vehicle dealers, real estate and travel agents, the government, the Ministry of Consumer and Commercial Relations, nets something like \$3.5 million in terms of profits, net revenues that go into general funds. The minister yesterday said he didn't expect there to be anything other than a marginal reduction in terms of the net revenues of the government, but the industries that are being regulated are being told they're going to have to fund fully the new regulatory bodies. Do you suspect that new user fees and higher costs will be there for the industries being regulated and the consumers?

Mr Little: I would think it's going to be a form of double jeopardy here, that there will be the losses of revenue and then costs to the industry and user fees, whether it's for access to information about a product. All together, it amounts to the farmer not only putting the foxes in charge, but he's starting to give away the farm as well.

Mr Jim Flaherty (Durham Centre): I take it, sir, that your concern is not private delivery, that your concern is public safety and consumer protection under the act. In that regard, I hear your fox analogy, but given the concern for consumer protection and public safety, have you had an opportunity to go through the act to look at the watchdog functions?

Mr Little: Yes.

Mr Flaherty: So you've read that legislative control is maintained by the ministry, in subsection 4(3), and you've read that contractual control is maintained, in subsection 4(1), again by the government, by the ministry? You've read that the business plan is within the control of the ministry, that a minimum number of board members go to the ministry? You've read that the annual review goes to the ministry, that the emergency power goes to the ministry, the regulatory control stays with the ministry, that there's a conflict provision that the regulations dominate? You have read that the revocation is that of the ministry and you've read the offences in section 14, a fine of \$100,000 a day for contravening the act? You've read all that?

Mr Little: With all due respect, I think that's eight questions, so the only —

Mr Flaherty: Those are all watchdog functions. My question to you is, if you've read the act, how can you come here and say there are no watchdog functions maintained by government, if you read those sections?

Mr Little: I don't think in my presentation anywhere it said no watchdogs, but you don't have to be a rocket scientist to see that this legislation permits so much water being put in the wine as to render consumer protection and safety in the province seriously at risk.

Mr Flaherty: I hear you say that. If regulatory and legislative control is maintained by the government of Ontario, how can you legitimately argue that any sort of delegation of legislative or regulatory control has been given?

Mr Little: Because this is an omnibus bill in this ministry, the same as your omnibus bill last year set a trend for wide-open ministerial powers to just give away the farm. That's why our submission is called what it is.

Mr Flaherty: You want to read the bill, I think.

Mr Little: This is akin to Bill 7 and it's akin to Bill 26.

Mr Gerard Kennedy (York South): I guess you don't have a handle on exactly how many people will be affected by this, from the standpoint of the union?

Mr Little: Yes, we do. Our calculations say 136 government employees to date and at least 100 more.

Mr Kennedy: So approximately 240 people will be affected by this. You're saying this government has already laid off more than half the people this would affect?

Mr Little: I'd have to get back to you on that one. I don't have the exact figure of how many people actually got their surplus notice, but it looks right now like 136 so far.

Mr Kennedy: Are they still on the job? They've just received their notices?

Mr Little: They've received their notices.

Mr Kennedy: I wonder if you're aware that this government, faced with the choice of increasing consumer protection or doing something to reward, I guess, people in industry who have asked for this, has decided to give not only the work to industry — and we have no sense of what qualifications or what kind of pay or what kind of engineering standards can be maintained there — but a tremendous amount of money as well. I'm not sure

if your union is aware of the figures, but in real estate it was \$1.5 million in cost, payments in terms of the civil service this year, and \$4.9 million collected by government; the difference between which, \$3.4 million, is a gift to the industry to do with as it pleases. The minister rejected that there be an amendment to make sure that's for consumer protection. In all, \$9 million will be given away by the ministry, which could cause further cuts in consumer protection unless the government is prepared to increase the deficit to finance this gift to these new industry associations.

I wonder what kind of perspective you can bring from the standpoint of the people providing consumer protection now in the face of those kinds of numbers. In other words, the government is going to save no money with the loss of their jobs.

Mr Little: I would say not only save no money, but have to face a daily barrage. This is going to come home to roost. This is the kind of thing that is going to make this government terribly unpopular in the years ahead when consumers are scrambling to find the protection they need, and it's doubly ironic that in doing so the government is losing millions of dollars to the general tax revenues of the province. For a government so concerned about the bottom line, notwithstanding a massive tax giveaway, that's particularly ironic. I agree that it's very important that those figures have come to light.

The Chair: Thank you very much, Mr Little, for taking the trouble to attend before us today.

1600

AUTOMOBILE PROTECTION ASSOCIATION

The Chair: Our next presenter is the Automobile Protection Association, Mr Turk, legal counsel. I apologize to the committee and the presenters for being late, as I was in the House. Welcome. You have 15 minutes, including any questions that there might be time for. Would you please proceed.

Mr Michael Turk: I'm going to be as brief as I possibly can. My position with the Automobile Protection Association is as their legal counsel. The Automobile Protection Association is the only organization of its kind in Canada that deals specifically with consumer protection issues only, with respect to the automobile and motor vehicle industry in this country.

When we talk about deregulation and consumer protection issues of the automobile industry — I'll focus now just on Ontario, but from the APA's standpoint — there has been a total erosion of any regulatory control or input on the part of the government if there are any complaints from the average consumer. As a matter of fact, the APA as an organization within the past two years has changed its policy. The policy used to be that if you had a problem with the motor vehicle dealer, be it a dealer, a salesperson or an employee, those complaints were referred to the ministry for resolution, hopefully investigation, and some quick action on behalf of the consumer through the government. Unfortunately, that doesn't happen any more. Any representations made generally come through me because I'm the first contact beyond the Automobile Protection Association.

Thursday 27 June 1996/Jeu-di 27 juin 1996 One of my roles is to dispense legal advice to Automobile Protection Association members, and unfortunately, if there are any problems with a dealer, our first line is to say, "Don't waste your time going through the ministry because you're not going to get anywhere." That's of major concern when you're dealing with what, for most consumers, represents their biggest outlay of cash next to their home. They need a decision or an answer almost instantaneously if it's with respect to cancelling an agreement of purchase and sale, a misrepresentation by the dealer, an odometer rollback, anything that happens with respect to the ownership or use of the automobile that may be beyond their control.

As I said, we've had major problems with this ministry over the past two and a half, three years. When you take a look at the legislation the way it is right now — and I'm talking not about the amendments to the act but the Motor Vehicle Dealers Act in general — it has the teeth to provide the consumer with a feeling that there's room there to make a complaint to the registrar or to the director and to have your action be investigated and have some control over the situation. It's there in writing. Unfortunately, the practice has not been to use that legislation to promote the interests of the consumer.

What the consumer in Ontario, with respect to a car dealer issue, is faced with these days is either arbitration or, generally speaking, they're in the Small Claims Court or the Ontario Court (General Division); they're litigating with the dealer. Generally they don't have the resources to do that. We try to do that, on a cost-effective basis, through the organization.

Unfortunately, that's where we stand in terms of consumer protection issues for motor vehicle dealers. Basically they've been eroded. They're still there; we think they should be used. The people in charge should follow the letter of the law and be more responsive to the needs and desires of the consumers.

I see this from a practical perspective because I'm in the trenches every day fielding phone calls from across the country with respect to basic issues, going from automobile rollbacks to a stolen vehicle that appears on a dealer's lot. What do they do? They don't get any help from the ministry.

If we take it one step removed, if we have an organization set up where essentially the watchdog is the industry itself, it won't serve the consumers' any purpose, and the fact that the government will technically have an oversight function is of no comfort to the Automobile Protection Association. All it does is remove it one more time from the consumer to get any fast results or have somebody answer the phone and give them an opinion.

The Chair: Thank you, Mr Turk. We have three minutes for each caucus.

Mr Flaherty: Mr Turk, thank you for being here this afternoon. I appreciate it. I understand that in the automobile area there is one self-management plan that's been fairly effective in terms of resolving disputes between consumers and motor vehicle dealers, that is, the Canadian Motor Vehicle Arbitration Program. Are you familiar with that?

Mr Turk: Very much so.

Mr Flaherty: I understand from the evidence we've heard here so far that that plan has been fairly effective. Are you aware of that also?

Mr Turk: The difficulty I have personally with Camvap is that it's a closed plan, so any time I make any inquiries to satisfy myself that it's effective, I can't get answers.

Mr Flaherty: It's an information problem?

Mr Turk: Right, and there's a gag order basically. If you go in through the arbitration, you have to make an election, and the election is that you either go through the courts or you go through Camvap. Once you go through Camvap, the consumer organization's right out of the picture. Really, I can't tell you. If they were more open, I'd be able to make an informed and objective decision. I just don't have the information to say whether it's effective or not.

Mr Frank Klees (York-Mackenzie): Mr Turk, thank you for your comments. The previous speaker obviously was very concerned about the direction of this bill and referred to the fact that some 136 ministry jobs may be lost. You said, and I'll quote, "Don't waste your time going through the ministry, because you'll only waste your time." I'm assuming that's a comment on the efficiency and the kind of responsiveness the ministry personnel were giving to issues that concern your sector. In your opinion, is a move in the direction this bill would take us positive for the consumers in this province?

Mr Turk: Not at all. The problem we have faced is that three to five years ago we thought the ministry was very effective, and the biggest complaint of the people we were speaking to on the inside trying to help the consumers was that they were understaffed and didn't have the resources to follow up on a timely basis every written complaint received. They couldn't even get through the initial stage, let alone decide which cases were worth prosecuting and which cases weren't.

We think the mechanism is there within the statute, but the administrative powers that be have not allowed enough resources to be allocated to make it an effective watchdog.

Mr Klees: So the system as it is —

The Chair: Thank you, Mr Klees. Your time's up.

Mr Bruce Crozier (Essex South): Good afternoon. I just want to get it in some perspective. What you're saying is that there is current legislation that's not being properly applied; therefore there has been a necessity of having the Automobile Protection Association. Otherwise, if it had been applied properly, chances are —

Mr Turk: The APA is more popular than ever.

Mr Crozier: But what you're also saying is that you see even the change as being a problem.

Mr Turk: Absolutely.

Mr Crozier: In view of the fact that the government has had a surplus in the area of \$2.7 million that could have been invested in consumer protection — I don't say it all has to be. In other words, they collected more in fees and income than they spent on consumer protection. Could you comment on what the government could do under the current legislation if more of the funds collected were used for the consumers' benefit?

Mr Turk: First, the government has to establish its mandate, and the mandate is that the consumers' interests are the ones that are paramount under the Motor Vehicle Dealers Act, not the interests of the dealers themselves. Once you get that philosophical change, then the people who will be involved in the complaint process and in the investigative process will have a mandate to fulfil the goals of the legislation and will feel they have the support of the people above.

What we have found is that there seems to be a malaise within the ministry, an extreme reluctance to take any of our issues at heart, and as a result of that, we're in the courts more often than not. At least if there was the truth that the ministry was a watchdog, not just the appearance — the appearance is no longer there, because people know they can't even get through on the lines if they want to make a complaint to the ministry.

Mr Crozier: As you started by saying they have to philosophically determine whether they support the auto dealers or the consumers, do you share with me that sinking feeling that they apparently are supporting the auto dealers more than the consumers?

Mr Turk: The consumers generally have the pessimism that they're fighting big business, and when they go up against a dealer, it's an average consumer, generally speaking working class, who has the problem, who can't access the system, has never used a lawyer before and I might be the first lawyer they've ever spoken to in their life. They feel they're up against big business to begin with, and then when they try to get through to the ministry to lodge a complaint, nothing ever happens.

Mr Kennedy: Do you realize that the ministry was only spending \$600,000 at the same time it collected \$3.2 million in fees? That starts to explain some of the lack of response. But I'm wondering if you could comment, just to make very, very clear, whether you think consumers can have any confidence in these new administrative authorities when the majority is going to be with the industry.

1610

Mr Turk: What we say as an organization is if the government is intent on deregulating, then make a specific provision that the composition of every board is going to be shared equally among the groups so that you can't stack the board with industry members, so that if a complaint comes in it's going to be reviewed objectively and not that there's one consumer member among 12 who's going to be consistently outvoted.

Mr Kormos: In terms of motor vehicles, there are basically two classes — new and used — each with their unique sets of problems. If a consumer gets stung by a lemon buying a new car, he or she's not just taking on the dealership, they're taking on Ford or GM or Chrysler or what have you.

Mr Turk: Correct.

Mr Kormos: So you're talking about even more powerful forces than mere Al Palladini by himself.

Mr Turk: Correct.

Mr Kormos: He's got all the Ford Motor company backing him up, trying to protect their interest.

Mr Turk: Yes, but there are different issues that collectively get lumped into motor vehicles and we're not necessarily talking about lemons, vehicles that you're going after the manufacturer on.

Mr Kormos: That's why I wanted to go on beyond the lemon, which is a new-car nomenclature. What are the other sorts of things that people are going to have to rely on this self-regulatory body to protect them from?

Mr Turk: All the issues with respect to the operation and purchase of a vehicle. The major issue that I'm focused with these days is rollbacks. The second one is automobiles from out of province that have been written off, new VINs coming on, and the vehicles are sold in Ontario as used vehicles without the record from the previous province. Those are the two major issues these days; stolen vehicles that reappear in Ontario as well.

Mr Kormos: We're told that these self-regulatory bodies are going to have the responsibility of registration of industry numbers; denial or revocation or suspension of registrants; inspection, investigation and prosecution of violations; and manager of consumer compensation funds and the handling of consumer and business complaints.

How can a consumer even have confidence, let's say, in the apparent arm's-length role of a regulatory body if they're doing the handling of consumer and business complaints and they're dominated by the industry itself? Is there anything even-handed about that from the issue of perspective?

Mr Turk: The consumers would have absolutely no confidence whatsoever in an organization that is basically self-regulating. We've had problems with it with the existing composition of the system and it can only deteriorate further if the people who are making the decisions are the same people who are asking to enforce.

Mr Kormos: The minister yesterday suggested that even CRAT was at risk, that it may not have any role to play down the road. Is the issue of the appellate process of concern to you?

Mr Turk: Not off-hand. My understanding would be that administratively you would still have your administrative law remedies if you're not happy with whatever decision is made.

Mr Kormos: Big bucks. You're talking big bucks there.

Mr Turk: Practically speaking, it's not an option. It's an option for the wealthy. It's not an option for the —

Mr Kormos: Folks down where I come from in Welland-Thorold who get ripped off by some sleazy car dealer are unlikely to be able to afford the big bucks that it's going to take to go to the appellate levels in the court system.

Mr Turk: That's a problem that we face all the time. The only advantage that we've had in the last few years is with the increase of the jurisdiction of small claims court to \$6,000. It makes it slightly more accessible to the consumer, provided that you're dealing with a vehicle whose damages are under \$6,000. Beyond that, the legal system generally is shut out to the consumer.

Mr Kormos: In your submission you talk about the need for the agency to be independent and I'm wondering how an agency in the structure that's proposed under this

bill could ever be truly independent. Perhaps you could help the committee with that, especially the government members.

Mr Turk: All I would say is that when we're talking about independence the people who are sitting on the committee cannot be affiliated with the body that is being governed. So if you have members on the committee who are wearing two hats — basically they're members of the association and they're dealers themselves and they're also sitting on the organization — one question is how they are going to be totally objective when it comes to a dealer issue. That's not to say that they won't be, but I would have philosophical concerns over that.

The Chair: Mr Turk, I thank you very much for attending today.

ONTARIO AUTOMOBILE DEALERS
ASSOCIATION
TORONTO AUTOMOBILE DEALERS
ASSOCIATION

The Chair: Our next presenters are the Ontario Automobile Dealers Association and the Toronto Automobile Dealers Association. Welcome, gentlemen. I would ask you to identify yourselves if you are taking part in the oral presentation for the purposes of Hansard.

Mr David Hodgson: My name is David Hodgson. I'd like to thank you for this opportunity to make this presentation to you today. It's my pleasure to speak to you on behalf of 8,000 motor vehicle dealers in Ontario, both new and used. With me today, on my left, is Mr Paul Stern, a director with the Toronto Automobile Dealers Association and the chair of their self-management committee. On my immediate right is Bill Davis, the director of government relations for the Ontario Automobile Dealers Association and the Toronto Automobile Dealers Association, and to my far right is Mr Bob Beattie, the executive director of the Used Car Dealers Association of Ontario.

We have come here today to speak to you as an industry united in support of Bill 54. Motor vehicle dealers in Ontario are regulated by the Motor Vehicle Dealers Act. The act requires all persons carrying out the business of buying and selling new cars and used cars to be registered and have a permanent place of business. The act set out rules regulating business premises as well as business practices.

In addition, the industry must comply with a myriad of other federal, provincial and municipal legislation, regulations and bylaws, ranging from federal and provincial tax and labour laws to municipal zoning bylaws.

The industry is also subject to self-help rules. For example, consumers can find redress through the Sale of Goods Act with respect to implied warranties, or the Environmental Protection Act in the event that a purchased vehicle does not meet emission control standards. Consumers may also seek compensation through the Small Claims Court.

In addition, motor vehicle dealers are the sole contributors to the motor vehicle dealers compensation fund, which offers consumers compensation in transaction disputes. This fund provides for reimbursement of up to

\$15,000 per claim in the event of an unsatisfied judgement against the dealer.

This industry though, like others, has marketplace issues and problems. However, the number of legitimate consumer grievances tends to be minor in comparison to the more than one million transactions conducted by registered motor vehicle dealers each year. Even these are often simple misunderstandings that are readily resolved by industry-sponsored mediation. But notwithstanding our relatively stable marketplace, there are areas for improvement.

We support Bill 54 and industry self-management for two basic reasons:

First, because of financial constraints and other constraints the government is not effectively regulating the motor vehicle dealer industry. Problems arise due to lack of enforcement against curbsiders and others who are breaking the law. We want an enforcement program that creates a level playing field for honest, law-abiding, registered dealers for the benefit of consumers and the industry.

The second reason we support Bill 54 is because we believe the motor vehicle dealer industry has the resources, the ability and the desire to regulate itself in a way that will enhance consumer protection, improve customer service, streamline administrative processes and improve the image of the industry, for despite its image, our industry has a strong track record of working with governments at all levels to enhance consumer protection.

At the provincial level, we have worked with various ministries to design the first plain language sales agreement for Ontario, which is unique in Canada; develop the used vehicle information package to provide history and lien information to consumers who purchase vehicles from private sellers; help to bring forward the Motor Repair Act to protect consumers from poor workmanship and unnecessary repair costs; and establish advertising guidelines for the industry to provide full public disclosure.

We have also worked with government to protect the environment through waste reduction and emission-testing programs. In the labour field, we've created pay equity, sexual harassment and hazardous waste material policies and programs specific to our industry. We've worked with finance and revenue on gas consumption and tire taxes, as well as a system to monitor and validate dealer sales.

These are just a few of the examples where the industry has demonstrated that it is ready, willing and able to work in the public interest to enhance consumer protection.

We believe that the implementation of an industry self-management program will provide another significant opportunity for us to continue to improve on consumer protection. At the same time, we can build confidence in the industry and create a fair and level playing field for our members.

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We view self-management as an industry opportunity to focus on specific problem areas. By fully utilizing the resources generated by registration fees from our industry, significant improvements in the marketplace can be

made through more effective enforcement of existing legislation and the development and implementation of education programs for dealers and the public.

The first major problem to be addressed is unregulated sales. Despite the laws requiring persons engaged in the business of buying and selling used vehicles to be registered, more than 200,000 vehicles are sold illegally each year in this province by unregulated curbsiders. Because these sales are unregulated, they may involve accidented and undisclosed rebuilt vehicles, as we just heard, vehicles which have odometer discrepancies, as we just heard, and vehicles with other quality or safety deficiencies. And because these sales are not made by registered dealers, the consumer is not protected by the motor vehicle dealers compensation fund. The consumer would have little or no recourse from a curbsider for vehicles sold with liens, prior accident damage or, indeed, if the vehicle had been stolen. Unregulated sales cheat governments out of millions of dollars in business taxes, income taxes, sales taxes, as well as the GST. It places an extra burden on honest, registered dealers.

Through self-management, the industry will provide the resources necessary to enforce the requirements of the Motor Vehicle Dealers Act. The industry will use every means possible to ensure that all persons in the business of selling vehicles to the public are registered. Through self-management, the industry will address public safety concerns and provide greater consumer protection. Self-management will also hopefully avoid or eliminate unfair competition between registered dealers and these curbsiders.

Another problem area that the industry will focus on relates to non-compliance by dealers because of lack of knowledge or misunderstanding of the regulations. Through self-management, the industry will provide basic education courses and establish minimum entry requirements to ensure those wishing to enter the industry have a good understanding of the law and their responsibilities.

The industry will also provide consumer education opportunities to improve consumers' knowledge of their rights and their responsibilities, and we hope this will assist them in their dealings with dealers.

Under self-management, the industry will also create a process to take action quickly against dealers who violate reasonable business standards and who, as a result, give the whole industry a black eye.

Far from deregulating, the industry will ensure that effective self-management means a well-controlled marketplace. The consumer and government representatives on the board of the new administrative authority will no doubt place great emphasis on the consumer protection mandate of this new authority.

In terms of consumer services, the industry plans to expand our current mediation program. We have a better than 90% success rate in resolving consumer complaints that are referred to us, and it is our hope that by expanding our efforts to facilitate the quick resolution of consumer and dealer disputes, we can avoid the use of the slow, costly and adversarial court system.

All of these initiatives will be implemented without cost to the government or consumers. Dealers view the

costs of improving the regulatory system as an investment in their industry for the betterment of consumers and dealers alike.

Our industry's future health is based on consumer satisfaction. Our members are very aware of how the marketplace can be improved. We are more concerned about this industry, its image, consumer confidence and a fair and level playing field than any government could ever be. It's our day-to-day business and it's our future.

The motor vehicle dealer industry is ready, willing and able to take on the privilege and the responsibility of self-management. We are committed to providing services and protection to the public and the industry at a level much higher than it is today. We support Bill 54 and look forward to its early passage.

The Chair: Thank you, Mr Hodgson. We have two minutes each. Mr Kennedy.

Mr Kennedy: Thank you for your presentation. I think it is important to recognize that there is a plethora of good businessmen running most of the motor vehicle businesses that we have in the province today. I had uniformly good experiences with the different trades when I ran the food bank.

I'd like to ask your opinion about what you think the impact will be in terms of image. I think there have been in the past image problems, probably more for used car dealers in terms of a general perception, and the idea that other people here have used the fox-and-chicken analogy, but simply that there isn't arm's-lengthedness there. Isn't that in effect something beneficial to your business so that there is at least the appearance of an objective regulatory authority there? Won't that be gone under the self-management provisions?

Mr Hodgson: I want to answer the first part and then I'll ask Bob Beattie to talk about the used car dealers in particular. We believe that the new self-management authority will have a better image and do a better job of effectively regulating the industry. We believe that with consumer education and a far faster and better mediation of disputes so that we can get away from the adversarial relationship we heard about earlier, we will improve and enhance the image. That's one of our real goals with this. We really want to do something about that. We don't want used car salesman jokes and more.

Mr Bob Beattie: I don't know if we can replace the used car salesman jokes any more than the legal profession can change theirs, but we'll certainly try. We think it's an opportunity to truly change the image of the industry. Our association particularly has its mission to enhance the image of the industry, and we'd done a good job of that. We have two lawyers on staff who deal with mediations every day; that's their sole job and that's totally paid for by our members. That's two lawyers who deal with nothing but consumer complaints and disputes over any kind of transaction with a motor vehicle dealer. It doesn't have to be one of our members. They'll also deal dealer to dealer and they'll deal consumer to consumer, at no charge.

Mr Kormos: When the minister was here, and in the propaganda they spin out to support Bill 54 they talk about its rationale as being the elimination of red tape. What kind of red tape do you encounter now that you'd

be freed of in the event that you were able to regulate yourselves?

Mr Hodgson: I'll lead off and then I'll ask Bill Davis to talk to you. To us this isn't about reducing red tape. To us it's two things: better enforcement and a more effective and efficient regulatory system for the benefit of the industry and the consumer.

Mr Kormos: So anybody who suggests it's going to reduce red tape is full of it?

Mr Hodgson: No.

Mr Bill Davis: No, Mr Kormos.

Mr Kormos: I tried.

Mr Davis: Presently the industry is governed by about 16 of the 18 ministries, as you know, that operate now. For example, if you're building a new body shop, upgrading it to meet environmental standards, once you do it in Whitby it's the same as doing it in downtown Toronto, yet you still will have to go through a horrendous amount of red tape to duplicate that. We think we can eliminate that.

The other thing is that we'll be able to eliminate red tape with respect to salesmen's registration and training. We are looking at setting up a training course. We're working on it right now so that we're bringing a qualified type of person into our industry based on models out of the United States automobile dealers' associations and Manitoba — part of that model even calls for training of our dealer-operators — so they'll be more informed, better educated, and there's no doubt we will avoid a lot of red tape that holds us up right now.

Mr Kormos: What has precluded you from doing that to date?

Mr Davis: It just hasn't been able to be done.

Mr Kormos: No interest on the part of the industry?

Mr Davis: There's been interest on the part of the industry.

Mr Kormos: Why haven't they done it?

Mr Davis: The previous governments.

Mr Kormos: Told them they couldn't?

Mr Davis: The previous governments just weren't interested in following in that course of line, that's all.

The Chair: Thank you, Mr Kormos. Mr Parker has two questions.

Mr John L. Parker (York East): First, I don't know if car dealers need to sheepishly apologize to a bunch of politicians about image problems among the public, but thank you for the flattery.

Mr Davis: We're a little bit higher than you are.

Mr Kormos: You've only insulted one New Democrat, but more Tories.

Interjection: How do we self-manage politicians, by the way?

Mr Parker: We've heard the comment more than once in the course of these hearings that the government is making money off this regulatory business, that it takes in more than it's putting back into the system. Maybe the solution is to redirect some of that revenue back into the system, put more resources into the enforcement the government regulations and leave it all in government hands. I wonder if you can comment on that recommendation yourself, or what you see good or bad about it.

Mr Hodgson: Number one, we understand that we do send in more in terms of revenue than the government spends on enforcing the regulations, not just on our members but on those who sell cars illegally. We think that's wrong. We believe that the resources we put in should be used to more effectively create a controlled marketplace and we welcome the opportunity to do that. Should it stay with government? We believe that we have more interest in controlling the marketplace than government has, we believe we can respond more quickly to changing realities in the marketplace, we believe we'll be tougher on our members than the government has been and we believe in self-management.

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Mr Parker: In your comments and in some we've heard from others we've heard some criticism of the competence with which government has administered the regulations. In your view, is that a result of the lack of resources or is that a result of mismanagement or other reasons?

Mr Hodgson: I don't think we could really comment on that, because we don't have the performance standards by which they were being judged or by which they were told to enforce the act. All I know is that we can probably do a better job and want to do a better job with the resources available to us.

Mr Davis: Part of it is that they didn't understand the industry in respect to the types of regulations and what was happening. Speakers before us talked about mediation for consumers, and both in the used car entity and our entity the dealers themselves — Bob has a more comprehensive type of remediation process. Within a new dealership there's a process, although probably it's not as articulated as it should be, that you go through a series of management with your concerns and the dealer principal, if he gets involved — it's usually resolved. When you're in business, you can't afford to have unhappy clients.

I just think that part of the problem in the past was that the government people weren't as aware of what happens in our industry. It's a very complex industry. It's not something you can look at in a second and understand. We employed some 55,000 people in our own industry, and Bob, it's probably another 6,000 or 7,000 or 10,000, probably up to 70,000 people across this province in small businesses. It's a complex business.

The Chair: I thank you, Mr Parker. Unfortunately, Mr Klees and Mr Doyle, there's no more time.

Gentlemen, I thank you for attending today and for your presentation.

ELEVATOR CAB RENOVATIONS

The Chair: Our next presenter is Elevator Cab Renovations, Mr Gary Morris. Welcome, Mr Morris. You have 15 minutes. Would you proceed.

Mr Gary Morris: Ladies and gentlemen, the certification of the elevator industry is not the first time a trade has been certified. As circumstances would have it, in 1968 the electrical trade was certified. At that time I was an apprentice in that trade. There were at that time both union and non-union companies as there are now in the elevator industry. Ontario Hydro, being the governing

body at that time, and still today, chose to grandfather all those who had been in the trade over seven and a half years and could provide proof. All those who could not wrote an exam produced and presided over in that case by Ontario Hydro.

An apprentice program was devised at that time, administered through the governing body, Ontario Hydro. This system consisted of on-the-job and theoretical training through schools administered through government control and government exams. Thus I come to the point of my presentation.

The elevator industry was divided, as the electrical industry, into union and non-union. Most of the men on the proposed committee are honourable men with the best interests of the elevator industry at heart. However, each of them has a vested interest. The board has direct union representation, direct MCCR representation and unionized company representation. However, 30% of the industry is completely unrepresented.

For the most part this segment of the industry consists of independent companies without a single voice. If Bill 54 is passed with the present committee, it would appear that this segment of the industry would continue without representation.

The bill, as presented, would give the impression that the unionized segment is better trained and qualified due to unionized training, thus making it the benchmark for qualification. There is no evidence to conclude that there is any significant difference in the safety performance or number of MCCR deficiency notices of completed projects in either group.

I urge you delay the passage of this bill until the advisory committee is re-established to more accurately reflect the composition of the trade and accept through personal affidavit anyone with seven and a half years of work experience as automatically grandfathered and everyone else writes a government exam.

Mr Kormos: I have no questions. We've been made very familiar with this issue by other presentations. It's clear that the government is being accused of favouritism for union elevator repair people. It's a peculiar position for this government to come under attack on, but I'm confident that this is one area where they're going to remedy the situation.

Mr Flaherty: I take it, Mr Morris, that the concern is with the interim advisory board.

Mr Morris: Yes, it is. As I said in my presentation, everybody on that board, they're honourable people. They just have self-interest.

Mr Flaherty: You realize that's not the Bill 54 board, that the interim advisory board is a temporary board that was —

Mr Morris: I recognize that.

Mr Flaherty: — appointed to deal with certification and training, that Bill 54 doesn't have any provisions in it that deal with certification and training and that the plan is that there will be an administrative agreement with a new board with composition from both the union and non-union sector.

Mr Morris: I realize that, but if Bill 54 just goes in as it is, there's nothing to guarantee that will be changed.

Mr Flaherty: I understand. The administrative agreement provision is there, and I think you can rely on the likelihood that there would be input, particularly given your presentation and a presentation we had yesterday. The point is well taken.

Mr Morris: Good.

Mr Kennedy: I know that you have a singular concern about the bill, but I wonder if you could express for us a little bit about how your current interaction is with the technical standards branch of consumer and commercial relations, if you could characterize what role it plays in the operation of your company's business.

Mr Morris: In my particular area, to tell you the truth, when MCCR first began certifying the trade, the original composition was that there was one level of mechanic. All my business does is the interior of elevator cabs. If that had gone along as it was, we would have been precluded right out of the industry as not even existing.

Mr Kennedy: Are you referring to the creation of the interim advisory board specifically?

Mr Morris: No, this is going back to when they first began moving into that.

Mr Kennedy: I'd like you to relate to what degree your company — it sounds like the less mechanical part of the elevator function.

Mr Morris: Yes.

Mr Kennedy: Are you inspected at all by the ministry?

Mr Morris: No, we're not; very rarely.

Mr Kennedy: I have no further questions.

The Chair: Thank you very much, Mr Morris, for attending today.

COMMERCIAL REGISTRATION APPEAL TRIBUNAL

The Chair: Our next presenter is the Commercial Registration Appeal Tribunal. Ms Killoran, welcome.

Ms Judith Killoran: I thank the honourable members of the committee for inviting me to speak today. Unfortunately it was at somewhat short notice, so I don't have a prepared text, but I'm prepared to answer any questions you may have. I'm here in my role as chair of the tribunal.

The Commercial Registration Appeal Tribunal hears appeals under 20 different statutes, everything from the Real Estate and Business Brokers Act, Motor Vehicle Dealers Act and matters under the Travel Industry Act. When people are stranded because of problems with their travel agent they can appeal to our tribunal for compensation. We hear both regulatory matters, as far as licensing, and compensation appeals under the Travel Industry Act and Ontario New Home Warranty Program.

Our tribunal is composed of approximately 60 members. The members are all part-time. By far the majority of them are small business people. They tend to come from industries that are regulated. I have motor vehicle salespeople on the tribunal, real estate agents, a large number of builders and travel agents. When we have an appeal under the particular statute which concerns them, those members then sit as the third member if we have a tripartite panel. The other member is someone who is

designated as a general member. That general member usually represents the general public, the consumers' association. Then there's a neutral person who sits as vice-chair.

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We had an annual general meeting of our board this past Friday, June 21, and there were some concerns expressed by members to me and I was asked to relay those concerns. At that time we didn't anticipate it would take this form, but I welcome the opportunity.

The members hadn't had an opportunity to review the statute. We had copies of it at the tribunal and hadn't had it for any length of time but had them available for the meeting on Friday. Just after some initial discussion, some of the questions that were asked related to the haste in which the legislation had been drafted, in that the majority of the members who represented the various industries did not know what was in the legislation, had not been consulted, were not aware of what was happening in their industries. They had some questions about who was consulted, who were the people designated as the representatives of the industries. They want to take part in the process if it's going to continue and would like to know how.

Another important question they have about the administrative agreements that are referred to in the bill — and there may be a simple answer to this question but I don't have it; I'm not that well acquainted with the bill myself. They were asking whether the administrative agreements between the minister and the industries will be public, will be subject to public scrutiny and public participation; that is, both the negotiation of the agreements and the agreements themselves. Perhaps the committee can help me with that question.

As well, the industry members asked some questions about procedural issues such as, will the administrative authorities, when designated, be bound by the SPPA, the Statutory Powers Procedure Act, an act which designates certain procedures to guarantee natural justice and fairness.

Not surprisingly, the most important consideration for the members of the tribunal related to the continued existence of an independent appeal mechanism. There was some question about whether the nature of these administrative agreements would dictate the elimination of an independent appeal mechanism, and if that is the case, where would consumers go? Not only consumers — and I think this is sometimes a misconception. It's not simply those who are appealing against decisions of the industry who appear before us, but many industry members come to us to appeal what they think are administrative decisions which have been exercised wrongly or made to their detriment. We hear a lot of appeals from real estate agents, motor vehicle dealers, builders and, understandably, they have some questions about the nature of their industry.

What they were saying was that in their view, the continued existence of an independent appeal mechanism enhances the credibility of their industry. They don't see it as something which infringes on their business activities. Rather they were of the view that there's more credibility, more legitimacy given to the industry in

question when those who are dealing with it know there is somewhere to go.

I think that sums up some of the concerns that were brought to my attention.

I must note one other issue, which is that there had been some mention that the form of self-administration under this bill would be analogous to what exists under the new home warranty plan act. Under the Ontario New Home Warranties Plan Act there is an appeal to CRAT, to this tribunal, of any decisions that are made. The new home warranty program is to be commended for its mediation, conciliation, all of the other forms of redress which it offers to home buyers. None the less, those difficult cases which it is not possible to resolve come to the tribunal.

The industries were questioning, if there is to be an appeal from administrative decisions, whether made by government or by the industries themselves, where will that appeal go? Will the appeal go to the Divisional Court? In that case, there were some questions about the resources of individual members and whether, for example, a real estate agent could afford to go to the Divisional Court if their licence has been revoked or there's a proposal to revoke their licence. If not to the Divisional Court, would there be an appeal internally within the administrative authority itself?

It was interesting that not only the so-called general members who represent the general public or various consumer associations expressed some doubts about that method, but in the main the industry members as well questioned whether that was the route they wanted to go, in that there has been a fair bit of public scrutiny and opposition to other self-managed bodies which have had their own problems. I think the members were not anxious to repeat some of those experiences.

I'm available for questions now. That's just a quick summary of some of the issues that were brought to my attention.

The Chair: Thank you. You've raised a number of interesting points.

Mr Flaherty: I suppose I should respond and then ask you a question, if I may. With respect to the involvement of persons here, a number of the groups of course have appeared as witnesses yesterday and today, including real estate agents, automobile dealers, amusement device persons and elevator industry people, so we've had a number of people here talking about some of the matters you've raised.

The minister has expressed his view that the administrative agreements will be made public, so I should make that clear to you.

Ms Killoran: That's reassuring. I'll pass that on.

Mr Flaherty: With respect to the involvement of the procedural provisions and appeals, clause 15(1)(c) of Bill 54 provides for the regulatory power with respect to hearings and appeals, and that is maintained by the Lieutenant Governor in Council, as I'm sure you've seen in the new legislation.

Ms Killoran: Yes, I have.

Mr Flaherty: For the time being, CRAT would remain as the appellate tribunal. There will be negotiations with respect to the administrative agreements, of course, and

I'm sure that hearings and appeals would be one of the items the different industry groups will want to raise with the minister and the ministry in the course of those discussions to arrive at the most efficacious and efficient way of resolving those types of disputes that arise at hearings and appeals.

The key here, of course, is self-management; that the mature industries involved have an opportunity to have input with respect to the structure of hearings and appeals and that it's not imposed on them by government.

I can stop there. Let me ask you a question. I think I've responded to some of the issues you raised. How do you see CRAT working in this system to help create efficiencies in costs and proceedings?

Ms Killoran: One of the ways in which CRAT has evolved in the last couple of years is that it's not as traditional a forum as it was in the past. Formerly, applicants before the tribunal faced a court-like body with court-like procedures. I'm not claiming that all of those procedures have been eliminated, particularly not those that offer procedural safeguards, but we presented our statistics for last year to our annual meeting and it appears that last year we resolved more disputes through ADR than through adjudication — by ADR, I mean alternative dispute resolution — and that includes a broad spectrum of everything from negotiation to mediation, conciliation, such that our numbers were higher in that category than they were for actual hearing days.

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That's one of the ways in which we have attempted to be more efficient: cut down on hearing days, earlier intervention when there are problems, earlier attempts to resolve things to both parties' satisfaction. We plan to continue in that fashion.

As well, we're an excellent example of an amalgamated tribunal. We can hear matters — presently, we hear matter under 20 different statutes — and if someone appears or files an application, we can deal with it in a generic way. We have a case management system, we have a range of ADR options, so we're not restricted in the sense that a tribunal which hears only matters under one act would be. As I say, we're small, but we have the ability and, I think, the resources to deal with many different licensing, consumer and compensation matters.

Mr Kennedy: I'd like to offer a different perspective than we actually had from the member. I don't think there is any intention to provide an independent appeal mechanism. It certainly seems fairly clear, further, that — and the composition of the boards, as you know, is made up of a majority from the industry, so I think complete self-management is what's intended here.

I wonder if you could tell us what would be lost if there is no longer an appeal to CRAT in terms of consumer protection and in terms of the functions. You've described some of the useful functions you perceive for your body in terms of these industries. Do you have any statistics? Do you have any sense that you can provide to us about what will be missing if that independent mechanism isn't there?

Ms Killoran: Before I answer, if I could ask you a question, and that is to clarify why it is your interpretation that there will not be an independent appeal mechanism,

because I'm getting two different answers from this committee.

Mr Kennedy: It's just that the research we've had is that that regulation, in terms of the different industry bodies that have been in discussion, is one of the things they'll want changed.

Ms Killoran: So that's an assumption?

Mr Kennedy: That's an assumption, yes.

Ms Killoran: Okay. I wanted to clarify that.

Mr Kennedy: Can you tell us more about what CRAT provides currently and how you anticipate it would change if these bodies are different from the ones you deal with today?

Ms Killoran: Currently, what CRAT provides is a fast, independent, efficient, accessible means of appealing administrative decisions. The decisions range from compensation under the Travel Industry Act to home owners' complaints under the Ontario New Home Warranty Program to licensing appeals under real estate and business brokers, mortgage brokers, and the list goes on. If the members want, I could list all 20 statutes. I doubt that that would be all that useful.

Within months of receiving a decision that a member of the public disagrees with, they can then have a hearing, a pre-hearing, mediation, conciliation — some way of resolving that complaint or that dispute. That's what would be lost. What would be lost is this arm's-length body which could review those decisions and offer a right of appeal to members of the public.

Mr Kormos: I know we haven't got a whole lot of time. Mr Flaherty would probably have a better recollection, because it was before my time, but I understand the whole process of creating an arm's-length appellate tribunal was a very important stage in the development of law and the concepts of natural justice here in the province of Ontario. As a matter of fact, I think it was Judge McRuer — I'm not sure of that — who, after a major report, really broke new ground and developed the concepts of tribunals and that development, that maturation of administrative law.

The impression one gets — and you asked Mr Kennedy how he reached that conclusion. I can tell you how I reached it: because Mr Sterling yesterday was very careful to say that for the moment he regards CRAT as being one of the players in the process. For the moment. But when we witness what this government's regard is for, let's say, WCAT — you see, because their attitude is, "We can reduce the number of claims by eliminating the appellate process in WCB," one is drawn to the irresistible conclusion in view of that, accompanied by Mr Sterling's "for the moment," that there may not be an appellate body. Would that seem to you to be a reversal of this healthy maturation of the law of natural justice?

Ms Killoran: Our tribunal has existed for 26 years so we're not a product of recent developments in the field of natural justice or thinking in the field of natural justice and fairness. However, amendments to various acts and the very existence of our tribunal can be attributed to attention that's been paid to judicial decisions, to the effect that it is important to have an independent body review administrative decisions. Our record as an independent body that reviews those decisions has been quite

admirable in the sense that to the extent decisions are appealed from our tribunal, and there are fairly few, by far the majority are upheld by the Divisional Court. So we are reviewed from the point of view of fairness and natural justice and all of those procedural safeguards, and there is an avenue for reviewing us and it appears that we're quite successful in that area.

So yes, that's a major consideration, that CRAT is a body that's part of the administrative justice system that pays heed to those principles.

The Chair: Thank you very much, Ms Killoran; that's been most valuable to this committee.

NATIONAL ELEVATOR
AND ESCALATOR ASSOCIATION
CANADIAN ELEVATOR
CONTRACTORS ASSOCIATION

The Chair: Our last presentation is Trident Elevator, Mr Hopkirk. Welcome, Mr Hopkirk. You have the floor. Please proceed.

Mr Allan Hopkirk: Good afternoon. My name is Allan Hopkirk and I'm the president and owner of Trident Elevator. Trident Elevator is a business, independent, non-affiliated company and 1996 marks 28 years in business. I began my career in the elevator industry in 1964 and purchased Trident Elevator in 1987.

My presentation to you today is on behalf of two organizations, one being the National Elevator and Escalator Association, the other the Canadian Elevator Contractors Association.

The National Elevator and Escalator Association represents four of the five major elevator manufacturers in the province of Ontario and speaks on behalf of the unionized sector during province-wide collective bargaining for the industrial/commercial and the institutional sector.

The Canadian Elevator Contractors Association is a not-for-profit organization representing 159 members across Canada. Its membership has increased by 12 members from the previous year and we expect to have a membership in excess of 200 by the year 2000. The Canadian Elevator Contractors Association represents 75% of the affiliated and non-affiliated technical field forces of the elevator industry in Canada and is the voice of the independent Canadian contractor in the nation.

At present I represent NEEA and CECA on an interim board for licensing of elevator mechanics in the province of Ontario and most recently as a member of the industry working group to proceed with implementation of the proposed safety organization in anticipation of passage of Bill 54.

In January back in 1991, NEEA and CECA, through an elevator all-industry committee, put forth a submission to the Ministry of Consumer and Commercial Relations for the purpose of developing an industry position on issues of concern to the entire elevator industry. The committee spoke on behalf of 85% of the industry manufacturing and contracting companies. The committee, which began to meet in 1989, put forth three very important issues. One was the urgent need to respond to the training and retraining requirements and set qualifica-

tion standards for the licensing of mechanics. The second was the need to establish how the industry and government can move to retrofit existing elevators with new safety features, and the third was a need to review and clearly establish the role of the MCCR in the regulation of the elevator industry.

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At that time, there was concern that the ministry was actively considering moving out of the business of inspecting elevators. The industry's position in Ontario absolutely opposed the government transferring the responsibility for elevator inspection to the private sector. The concerns the elevator industry had if they were to transfer the government's responsibility for elevator inspections to the private sector were as follows.

Privatization would jeopardize existing high-quality standards which Ontario elevator manufacturers had earned on the international market.

It would lead to an inconsistent quality of inspections, since various agencies would conduct the inspections, each with different personnel and different interpretation of standards.

It would enable unpredictable and fluctuating costs and availability of inspection services due to a private organization's focus on profitability rather than the ministry's public safety focus.

It also provides a potential for conflict of interest.

I have provided you this background information to enable you to appreciate the efforts of our associations to date and position ourselves to you in our enthusiasm and support over Bill 54. It is a move that will least affect the daily way we conduct our business and still enhance public safety.

We believe that the proposed legislation will ensure consumer protection and promote public safety by enabling regulated industries to have greater involvement in the delivery of public safety programs, improve professional regulation and consumer protection and be able to accelerate the important work of harmonizing national and international technical codes and standards. The major benefit of the harmonization of codes is in the enhancement of public safety by providing safer products.

By providing a level playing field we expect to see more business providing the same product at a more competitive price. Often it is the case a manufacturer would not enter into an area where opportunity for business is restricted by specific codes, as volumes do not warrant additional manufacturing standard changes. Standardization will enable builders and developers to build more for less and, in the end, provide cheaper housing and rental units.

The purpose of the act which facilitates the administration of designated acts named in the schedule, by delegating to designated administrative authorities certain powers and duties relating to their administration, will enable us to provide a more streamlined operation. As an example, we believe that a review of the structure of the technical standards division will also enable us to get more for less.

We see the operation of the technical standards division and enforcement branch of the MCCR as similar to the operation of an elevator company. In our business today we operate on a ratio of three productive field

persons versus one non-productive. It appears that the division operates with six times as many people on a scale of three non-productive to one productive.

The process by which the technical standards division reviews drawings and submittal documentation should be revisited, as it is the engineer staff by the company making the submission that holds the end responsibility.

Although both NEEA and CICA are most supportive of a safety organization that is not for profit, under no circumstance would we support or entertain any safety organization that will generate revenue for the government. Any revenue generated must be reinvested in new tools, methods and technology to make the new safety organization more efficient. Excess revenue should be rebated or result in lower fee structures. We feel that the public would be most disappointed to learn of a not-for-profit safety organization that was required to generate revenue for government.

In the development of the administrative agreement, we would trust the administrative agreement initially to be short term, for example, one year; truly not-for-profit other than for value added services, otherwise again public safety could not be the primary function of the safety organization; restructured to provide flexibility to evolve; restructured to promote and enhance public safety in the most efficient way possible; to have a board of directors totally representative of all the stakeholders; to enable the board or the safety organization to have authority and independence to make decisions respecting public safety, delivery and have the government merely endorse the decisions.

In support of a safety organization, the minister must provide immediate approval of any required resources to enable a very thorough review of the current technical standards division structure and provide assistance, both human and financial resources, to enable the interim working group to quickly lay out a framework for the new safety organization.

The minister must promptly provide and release the first draft of the administrative agreement so that the interim working group of stakeholders can be fully aware of all delegated administration requirements.

The delegation of responsibility by the government to a safety organization is supported by CECA and NEEA on the basis of public safety, and the means to provide and deliver the necessary programs take precedence over all other policies and procedures.

Any hidden agenda introduced by the minister of which our association becomes aware will greatly jeopardize our support of the organization. I'd like to thank you for the time that you extended to us to make this presentation.

The Chair: Thank you, Mr Hopkirk. Mr Kennedy, we have about three minutes each.

Mr Kennedy: Thank you for your presentation. As you're aware, the safety organization is the largest component of this. It's \$15 million worth of government activity. Currently there's about \$19 million in fees collected to support that activity. I think you may have become aware of some ambiguous statements by the minister made here yesterday that somehow the government wouldn't lose revenue and yet at the same time

there's excess revenue currently being collected, then, that's being expended on the safety organization. Is that what you mean by a hidden agenda? You made reference to fees being collected out of this non-profit organization. Is that one of your primary concerns?

Mr Hopkirk: I believe that a not-for-profit organization should be not-for-profit, and the revenues generated, however large they may be, should go back into the programs. We pay corporate taxes, we pay other taxes, and we feel that in the best interests of public safety we can do more by having more inspections, better-controlled, better-managed inspections, and do more to enhance public safety with revenue that is generated than at present.

Mr Kennedy: Would your organization be prepared to accept in the administrative agreement or even in legislation what you just said, that all of the moneys which are currently being remitted by members should be used to further those purposes?

Mr Hopkirk: Yes, we do. If the government's going to give us services for value, then we would have to expect to pay for it, because they're still going to maintain their regulatory control.

Mr Kennedy: In terms of what the public could expect over the next little while if these are implemented, you made some comment about rebating fees to members. Do you think the fees that are collected from members are too high currently?

Mr Hopkirk: I believe we always feel that.

Mr Kennedy: But this will be different in the sense that your feelings will matter because the degree to which you're comfortable collecting fees will be the degree to which you're able to provide the safety services. So I appreciate that probably is generally true, but I wonder if you could address what is probably going to be a concern on the part of the people riding up and down on the elevators in terms of the independence of your organization in that fiscal respect.

Mr Hopkirk: Primarily the revenue generated, whatever it may be, would go towards more periodic inspections, better-controlled inspections, better use of inspectors' time, of the department's time, and if there was revenue beyond that, then we would expect to see some kind of rebate or reduction in fees.

Mr Kennedy: There are two basic questions. Would you agree to have something written into the administrative agreement or into the act that would say that the current level, which is in excess of about \$3 million, should go to enhancing safety? That's the first question. The second is, in order to make sure that the confidence is there, which I'm sure your industry must very much value and depend upon, that the majority of the board, which would be set, be people who are independent of the elevator industry itself. Would those amendments be of interest to your association?

Mr Hopkirk: I can answer yes to the first question but I do not understand the second question.

The Chair: I'm sorry, Mr Kennedy, your time is up. Mr Kormos.

Mr Kormos: If Mr Kennedy wanted to put the second, go ahead. Quickly, please.

Mr Kennedy: The second question is simply whether or not the — it's currently proposed you would have the majority of the board?

Mr Hopkirk: Yes.

Mr Kennedy: But in order to have full public confidence and not the appearance of self-interest, it would be beneficial to have a majority that wasn't made up just from your industry. Would you agree to that?

Mr Hopkirk: How the board is structured is very important to us. Presently we have a council. We're concerned about the structure of the present council. That might need some rework. The government has stated to us that it would hold a majority on the board. These are things that are favourable to us. But, yes, we would definitely have to have a board made up of the proper stakeholders and it would have to have the control back.

Mr Kormos: You're not only a businessperson and a person involved in the trade, the industry, but you're a consumer as well, right?

Mr Hopkirk: Yes.

Mr Kormos: You know that now when there's a failure, let's say, of an elevator, and sadly, regrettably, an elevator or elevator shaft accident, at the end of the day all hell breaks loose right here in the Legislature and either the Minister of Labour, if it's a workplace construction site, and/or the Minister of Consumer and Commercial Relations gets under the gun because the buck stops there. Right?

Mr Hopkirk: Correct.

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Mr Kormos: Where do you propose that the buck stops in terms of there being a breakdown in the process once the industry is self-regulated?

Mr Hopkirk: We don't believe that will happen because we believe the government, in its presentation to us, will still oversee the safety of the public by its management or its overseeing of the safety organization itself. If the safety organization is not delivering the program effectively, then the board of directors will be responsible, the organization will be responsible to the government to make those corrections. We do not see the government stepping aside. If the safety organization was not fulfilling its role, we would expect to have audits on it. The government has told us that would be part of its policy.

Mr Kormos: What interests are going to be achieved in a very practical way by the government relinquishing its active participation if indeed it still plays the role you just spoke of?

Mr Hopkirk: On that particular issue or in general?

Mr Kormos: In general.

Mr Hopkirk: Right now, because of past governments and existing situations, there are elevators that should be inspected on a more frequent basis. They're not able to do that; there are elevators that have not been inspected that should have been inspected.

Mr Kormos: I know. There are still some with my name on the licence, which is truly remarkable.

Mr Hopkirk: We need to address that. There's a process in the government right now that will enable 5,000 reinspections a year not to be done, to free up inspectors' time so they can get out and do the periodic

inspections or do them more frequently. This is just a method by which they will relinquish reinspection on elevators that do not have a high-risk factor. There are lots of ways we feel that, working with the existing system, we can improve it as well.

Mr Kormos: We heard Mr Kennedy make reference to the fact that when he was sitting here yesterday Mr Sterling said he didn't expect the government to lose any of the net revenues yet at the same time expected the industry to self-fund these regulatory bodies. Somebody's going to end up paying more, aren't they, if he's going to have the same net revenues, yet the industry is going to be called upon to fund this not-for-profit regulatory body?

Mr Hopkirk: We are not in support of a not-for-profit organization that is going to generate revenue for the government.

Mr Kormos: No, no, the government is saying that it's still going to somehow manage to collect the revenues it's currently getting — you pay those now — and then it's also going to have you pay for your not-for-profit regulatory body. It doesn't add up. Only in Ontario 1996 does two plus two equal five. Are you prepared to pay more as a participant in the industry?

Mr Hopkirk: No, we believe we will pay less.

Mr Kormos: Hold on to your wallet.

Mr Flaherty: Mr Hopkirk, thank you for coming this afternoon. We've had at least two presentations here in the last two days before the committee by persons in the elevator business who are concerned about the union/non-union matter, primarily with respect to this interim advisory board within the ministry. I gather you're a member of that board.

Mr Hopkirk: Yes, I am.

Mr Flaherty: Your business is non-union, is it?

Mr Hopkirk: Non-affiliated, yes; independent.

Mr Flaherty: That board has been concentrating on training, certification and licensing of elevator mechanics?

Mr Hopkirk: I believe so, yes.

Mr Flaherty: With respect to the proposed new legislation, Bill 54, how do you see the inspection process working, the need for the independent inspections in the elevator area?

Mr Hopkirk: What do you mean by inspections, sir?

Mr Flaherty: I was listening to your presentation. That's where I —

Mr Hopkirk: The independent section?

Mr Flaherty: Yes.

Mr Hopkirk: I believe that the independent elevator contractors are represented through the Canadian Elevator Contractors Association, which represents primarily the independent, non-affiliated contractors in Ontario, and I feel the representation is excellent.

The Chair: Thank you, Mr Hopkirk.

That is the remainder of our presentations here today. We have been joined by Mr Michael Wood, who is the legislative counsel. The subcommittee has set aside one hour for clause-by-clause. If it cannot be done in that time and there's no objection, we will continue. This is the unstructured portion of our deliberations in that there are no time limits and I am only here to keep order and

not use my watch any longer. I understand there were, however, some questions from yesterday. Is this an appropriate time to deal with them or shall we deal with them as we come to individual clauses?

Mr Crozier: I have one, Mr Chair, where I think you could be helpful and leg counsel could be as well. I wish I could be more specific myself, but there were questions raised as to whether currently certified union mechanics would be treated preferentially over non-union mechanics in a series of grandfathering periods of years of experience. I'm sorry I can't be any more definite than that. Where the Chair can help me on this is: Where do we find that in the act, and if we find that's inappropriate, how do we address the problem?

It bothers me when somebody looks like, "I don't know what you're talking about, Crozier."

The Chair: One of the filings with us pointed that out too. Mr Flaherty, can you assist us with that?

Mr Flaherty: Yes. Bill 54 does not deal with that, period. I raised that with a couple of the witnesses. It doesn't deal with certification and training of elevator repairers and so on. I understand the concern that was expressed by the witnesses. As a general concern, it doesn't apply to this piece of legislation.

Mr Parker: You were on TV when Flaherty did the thorough analysis of that.

Mr Crozier: Was I?

Mr Parker: You were very good.

Mr Crozier: I probably made as much of a point there as I will here. I guess that's what we were told by leg counsel too, in all fairness. What does address that problem? Notwithstanding that it may not apply specifically to Bill 54, can you help me as to where then we can correct that if that is a problem?

Mr Michael Wood: Mr Crozier, I regret that I'm not able, in my role as legislative counsel in this committee, to really offer an interpretation of existing legislation. What I can do is take instructions for motions and, in taking instructions for motions, give you my best reading as to what the bill says. But if you really want a definitive reading as to what the bill says the law is in the area, I think counsel of the ministry and ministry staff are better qualified to give you an opinion.

Mr Crozier: I will accept then the fact that Bill 54 doesn't address it, but we all know what we're talking about. Is that a concern of the government's and is there a way we can —

The Chair: Mr Crozier, CEC Systems did file with us a presentation. They make reference to the Trades Qualification and Apprenticeship Act and the Ontario provincial agreement. I believe they point out in their second page, if that's correct, Mr Flaherty, that this would determine what we've discussed in regard to qualifications of union and non-union. Is that correct, Mr Flaherty? Are you familiar with it?

Mr Flaherty: There already is, as we've heard here, the interim advisory board, of which the last witness is a member. That board is there specifically to deal with training, education and certification issues. It continues.

Mr Crozier: Okay, so we should follow this through another avenue.

Mr Flaherty: Yes, that avenue is open.

Mr Crozier: Thank you for your help.

Mr Kennedy: I would like to express a little bit of disappointment. We were promised answers by the ministry around baseline, convictions — activities, in other words, in some statistical form of the very areas that are being affected by Bill 54. It had been my hope to have those on hand today and even for part of the questioning yesterday. They'll be a little bit less germane for clause-by-clause, but I would still appreciate having that information were it to be available.

Mr Flaherty: I think I can answer the questions that were raised, the information requests that were made, if I may take a moment to do that.

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The Chair: Please do.

Mr Flaherty: It might take two or three minutes. The following information relates to two initiatives enabled by Bill 54: (1) industry self-management in the real estate, travel, motor vehicle dealer and cemeteries industries; and (2) creation of a safety organization to administer the seven public safety statutes.

With respect to industry self-management, and here's where we get into the figures, the current direct operating expenditures as of April 1, 1996, including staff salaries and benefits in consumer affairs, business affairs branch, business division, the figure is \$7.9 million. The next figure is an estimate, and it's an estimate because we're dealing with corporate services at MCCR and some part of it would be attributed to this work, but not all of it. The estimate of current indirect expenditures, which includes corporate services provided centrally by the ministry, such as human resources, finance and administration, legal services, accommodation and information technology, is a range of \$500,000 to \$2.37 million. Current revenue as of April 1, 1996, is \$11 million; estimate of net revenues over direct and indirect expenditures — that is, the difference — is \$2.6 million. That's dealing with industry self-management.

If I can change the subject to safety organization, the second aspect, which is in the technical standards division of the ministry, current direct operating expenditures as of April 1, 1996, including staff salaries and benefits, \$16.7 million. The estimate of current indirect expenditures — this is the same concept as before; it has to be an estimate because it depends on how much of the expenditures you attribute to this work — includes corporate services provided centrally, such as human resources, finance and administration, legal services, accommodation and information technology — the range is \$2.3 million to \$5 million. Again, the current revenue figure as of April 1, 1996, is \$21.9 million, and the estimate of net revenues over direct and indirect expenditures is \$2.9 million. That's the end of the dollar information.

There was some further information requested. Further discussions with administrative authorities will determine, first of all, more detailed projections of costs in relation to revenues, and secondly, the portion of net revenues available for investment in new technologies, new consumer education activities, reimbursements to government for its oversight functions and so on. Through these initiatives, the government will reduce its direct and

indirect expenditures by delegating operational functions to administrative authorities and delegating the ability to charge and retain fees for those functions.

With respect to industry self-management and the human resources at the ministry, 55 ministry positions are currently involved in administering functions which are intended to be delegated to administrative authorities; that is, real estate, travel, motor vehicle dealers and cemeteries. With respect to the safety organization, 264 ministry positions are currently involved in administering the seven public safety statutes scheduled for delegation. It is not possible at this time to determine the precise number of staff who will either be employed by future administrative authorities or be redeployed either within the government or the ministry; that is, the ministry will play a future oversight role for each administrative authority. The third option is to retire or cease employment with the Ontario public service through attrition during the period before full implementation, which is estimated to take up to three years.

I believe those comments respond to the requests for information that were made.

Mr Kennedy: Thank you for that information. I would just note that, in the interest of business and consumer affairs, while those are the figures in public accounts for the total department, the four affected areas, we received information yesterday that was at variance. Just for the record, it was \$1.5 million in real estate, \$600,000 in motor vehicles, \$287,000 in the travel industry, and no amount was given for cemeteries. The difference is substantial, though, in terms of our appreciation, because that indicates a net cost of around \$2.3 million, not \$7.9 million. The whole consumer affairs function is, at least not at this precise moment, being suggested for self-regulation, and therefore I think it is important to note that the net revenue is actually very likely to be somewhat higher than those figures indicate. But I do appreciate the member's effort in bringing that forward.

The other deficiency simply is the baseline information. We were told by the ministry we would have to go through freedom of information to find out just what number of complaints, what number of convictions and indeed what kind of activity is happening in the ministry currently so we can have a baseline against which to measure the new organizations and how effective they're being in responding to both consumers and industry. That hasn't been forthcoming, and I regret that, because it means we make our deliberations today in a vacuum without that pretty important information.

The Chair: Your comments are noted. Mr Kormos, were there any questions you would ask of the minister on which there was agreement to give you information?

Mr Kormos: I just want to start with clause 1.

The Chair: Okay. If I may suggest, I believe there are no amendments in regard to sections 1 to 5. Could we deal with them as a group or do you want to deal with them individually? I think they're all of general application, sections 1 to 5; purpose, definitions, designations, administration agreements and conflict. Is there any dispute in dealing with sections 1 to 5 as a group?

I'll ask for a motion. Shall sections 1 to 5 carry? Is there desire that we debate sections 1 to 5?

Mr Kormos: I should indicate to the Chair that I don't intend to speak to each and every one of these clauses. I'll be addressing our concerns about the bill in its totality when we come to the conclusion of the clause-by-clause. I'll also be addressing some specific amendments as moved by the government as we deal with them in clause-by-clause. Otherwise, if I'm going to address any of these clauses, I'll indicate so to the Chair. I appreciate the Chair's concern about this tawdry bill.

The Chair: Sections 1 to 5 have been moved and carried.

We will now move to section 6, and there is a proposed amendment.

Mr Flaherty: I move that subsection 6(1) of the bill be amended by striking out "subject to subsections (2) and (3)" in the first line.

Mr Kormos: I trust Mr Flaherty will explain why this was done. It was either an error in the initial drafting or it's an attempt to alter significantly the impact of subsections 6(2) and 6(3).

Mr Flaherty: It's to clarify that the right to the remedy of the minister revoking only applies where the administrative organization or agency has not complied with the act or the administrative agreement. It was thought that there was some ambiguity with the preamble subject to subsections 6(2) and 6(3), and it's for that reason that it's proposed that they be deleted.

There's a further amendment to follow with respect to subsection 6(3), which after "administrative authority" would insert the words "under clause (1)(a)" so that the scheme of section 6 would be consistent that the administrative authority will have the right to attempt to remedy a problem before revocation by the minister.

The Chair: Shall the amendment to subsection 6(1) moved by Mr Flaherty carry? That is carried.

There's another, Mr Flaherty, 6(3).

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Mr Flaherty: I move that subsection 6(3) of the bill be amended by inserting "under clause (1)(a)" after the word "authority" in the third line.

If you look at the section, it currently reads, "The Lieutenant Governor in Council shall not revoke the designation of the administrative authority if the designated administrative authority remedies its failure within the time period that the minister specifies."

If the amendment were allowed, it would read, "The Lieutenant Governor in Council shall not revoke the designation of the administrative authority under clause (1)(a) if the designated administrative authority remedies its failure within the time period that the minister specifies."

Mr Parker: If I might just ask legislative counsel, we seem to be using the terms "subsection" and "clause" interchangeably. Am I right in that, and is there any reason for that?

Mr Wood: The use of terminology follows Ontario drafting conventions. "Subsection" is used when the reference is to the first division of the section. For instance, in section 6 you have in brackets (1). That is a subsection. But the (a) and the (b) which constitute the subdivision of that subsection (1) are called clauses.

The Chair: Any further comments or questions? If not, shall the amendment carry? Carried.

Shall section 6, as amended, carry?

Mr Kormos: No. We've got subsections (4) and (5).

The Chair: We vote on the whole section now.

Mr Kormos: I wanted to ask a question about subsection (5). Turn the page and it's right there. Obviously, you don't want to give remedies to self-regulatory bodies that have had their power revoked by the fiat power of the Lieutenant Governor in Council. Is that correct?

Mr Flaherty: I think Mr Kormos is addressing the Statutory Powers Procedure Act, subsection (5).

Mr Kormos: My question is, what's the government afraid of?

Mr Flaherty: It seems to me that what the government is reserving is the right of the Lieutenant Governor in Council to consider it advisable in the public interest to revoke a designation without that power of the Lieutenant Governor in Council being subject to the Statutory Powers Procedure Act.

Mr Kormos: So you're not interested in judicial review of a decision of a minister?

Mr Flaherty: Of the Lieutenant Governor in Council; it's not the minister.

Mr Kormos: Please. We know the Lieutenant Governor in Council is cabinet. What's remarkable is that there's been a trend, Mr Flaherty, away from cabinet exercising its fiat power. You're well aware of that. You surely must agree that that's a healthy trend.

As you know, during the course of the last government there were a couple of levels of obscure appellate power exercised by cabinet. What happens, as you know, is that cabinet makes political decisions, and that's what the criticism was under various provincial statutes: the right to appeal to cabinet from orders of tribunals and boards. I think this was applauded by every fairminded person, in fact, that cabinet no longer had that power, because cabinet inherently makes political decisions, not judicious — certainly not judicial and oftentimes not judicious decisions.

What you've got here is that you claim a statutory framework and you claim this is what protects consumers and players in the respective industries, yet you're effectively giving cabinet the power at the end of the day — and cabinet's designed to make political decisions — without there being any authority or any power on the part of a board or agency that's been screwed over, if you will, by the political decision-making of cabinet to appeal the legality of that. How can you on the one hand speak out for evenhandedness and on the other hand deny — as you know, the SPPA is very restrictive; it's not a broad-ranging right of appeal but very restrictive. Surely you don't want to turn the clock back so that cabinet can exercise this kind of power without there being SPPA rights.

Mr Flaherty: If I understand the scheme of section 6, which is what we're discussing, the administrative authority, before revocation, gets notice and gets an opportunity to remedy, and that's before any action is taken. The Lieutenant Governor in Council is called upon to look at the public interest, which I'd suggest is the proper consideration of the Lieutenant Governor in

Council. There are sections of the act, as you know, where the minister is referred to. In this important revocation section, it specifically provides that the decision is not to be the minister's but the Lieutenant Governor in Council's.

As I say, the administrative authorities have the right of notice and an opportunity to remedy, and with the amendments there would not be revocation until the administrative authority had the opportunity to remedy. But when you've gone through all those stages outlined in section 6 and the administrative authority is still not acting in the public interest, then the section would provide, I suggest correctly, in the public interest, that the Lieutenant Governor in Council could revoke. That's the scheme.

Mr Kormos: I guess I was wrong, then, Chair. These people do want to turn the clock back to Court of Star Chamber times. I'm opposed to it.

The Chair: It's an interesting point though, Mr Kormos. I didn't realize the Lieutenant Governor in Council might be a quasi-judicial body. That's a new concept.

Mr Kormos: That's the problem. They're not. They're a political body and that's why —

The Chair: And that's why the act, I guess, doesn't apply.

Mr Kormos: And they're not even judicious most of the time, never mind judicial.

The Chair: I've never been in the government. You have, Mr Kormos, and you're a better judge of it than I am.

Shall section 6, as amended, carry?

Mr Kormos: Recorded vote.

Ayes

Doyle, Flaherty, Hudak, Ron Johnson, Klees, Parker.

Nays

Crozier, Kennedy, Kormos.

The Chair: Moving on to section 7, are there any comments or questions in regard to section 7?

Mr Kennedy: I have a problem with the potential conflict in subsection (2). What this really is saying is that industry associations can carry out all manner of other activities, including those which have put them in conflict with their general obligation in the first section. For example, industry associations, you would think, could do government lobbying, could do other things on behalf of their members which would have potential conflictive value but also would detract from the arm's-lengthedness that I would assume would be the object of industry and this government, at least in the initial creation of these bodies. I'm wondering if anyone from the government side would care to indicate why this is necessary and why these bodies instead can't simply perform the duties that they agreed to undertake.

The Chair: Are there any further comments or questions? If not, shall section 7 carry? That is carried.

There is an amendment from the official opposition, subsection 8(2.1). Mr Crozier.

Mr Wood: Excuse me. Before we get to that, I just want to ask if the government had moved an additional motion to affect the French version of subsection 8(1).

Mr Flaherty: I will move that. I move that the French version of subsection 8(1) of the bill be amended by striking out "Le ministre peut, à sa discrétion, nommer" in the first and section lines and substituting "Le ministre peut nommer, à titre amovible."

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The Chair: Any questions or comments in regard to the resolution moved by Mr Flaherty?

Mr Parker: I want to protest the late hour of this amendment. I haven't had time to study it.

The Chair: If not, all those in favour of the amendment? It is carried. Mr Crozier.

Mr Crozier: I move that section 8 of the bill be amended by adding the following subsection:

"Equal representation

"(2.1) In appointing representatives of business groups as members of the board of directors of a designated authority, the minister shall appoint an equal number of representatives of business groups with workplaces containing unionized employees or independent contractors as representatives of business groups with workplaces containing non-unionized employees or independent contractors, if both types of business groups exist."

Mr Parker: So if there's one unionized shop in the field, there can be only one representative of an non-unionized shop. Is that what your amendment means?

Mr Crozier: I suggest yes. The problem with the board being biased is really what we're trying to get at, and that gets to my concern earlier about unionized certification of mechanics being different from non-unionized certification of mechanics. It's a concern that if the board doesn't have both types of representation, recommendations made to the new committee being set up under Bill 54 — that non-unionized businesses will be treated differently from unionized.

Mr Parker: Conversely, if the field is dominated by union shops and there happens to be one renegade that doesn't have a union, then there can only be one union shop represented. Is that satisfactory to Mr Kormos?

Mr Kormos: You're asking Crozier the questions.

Mr Crozier: I suppose you can take it to any extreme you want. We're trying to address the problem that's been brought to us. Frankly, I would have thought the government doesn't want any imbalance in this, or any perceived imbalance.

Mr Klees: I'd like to add a comment, more a question, really. I don't think we differ in principle in terms of there needing to be a balance and appropriate representation. I've got a problem with the word "equal" in the sense that equal may not be fair, given the distribution of the workforce. If we have 90% of the workforce unionized and 10% non-unionized, yet you've got an equal number of representatives on the board, I'm not sure that's getting at what you're trying to achieve here either.

I think the original intent was that the makeup of this board be dealt with outside of the legislation and through the business plan in terms of setting the stage, as a result of discussions with the industry, providing some guidelines. But I've got a problem with how this is worded,

not with the intent of it but with how it's worded, and I hate to see it entrenched in legislation this way.

Mr Kormos: Speaking to the amendment but this whole section, these are pretty wacko setups. You're talking about an administrative authority as being one that's presumably a non-profit corporation under federal or provincial corporation laws, which as I understand it — and again, I'm relying upon legislative counsel — has its own formula for how many directors there are, and it would be the bylaws of that corporation that would determine whether they're to be representative or coming from a broad mixture.

This government doesn't quite get it. You've got it as if this is some sort of government body like, let's say, a district health council, which is the creature of statute wherein the makeup of a board is determined by statute. In section 8, you've got the power of a government to appoint members to what in effect is a private corporation, albeit non-profit.

Do you understand how I'm having difficulty reconciling this? On one hand, they say the administrative authority is going to be a corporation incorporated under the laws of either Canada or Ontario, so there's some choice there. Then here it gives the provincial government power to appoint members to that board of directors of the corporation, but the board of directors of the corporation grows out of, as I understand it, the articles of the corporation. I could well be wrong.

Mr Parker: Just like the boards of hospitals or boards of universities or what have you.

Mr Kormos: But those are created by statute and aren't defined as a not-for-profit corporation incorporated under the laws of Ontario or Canada. You see, the hospital boards are created by virtue of the Hospitals Act.

Mr Klees: Mr Chair, perhaps we could get clarification. My understanding is that because this non-profit corporation is empowered to raise revenue, it's in fact a requirement that the government appoint a majority of the board. Is that not correct? Could we get clarification?

Mr Flaherty: In this bill subsection 8(1) says the minister may appoint up to a minority, not to constitute a majority. The reason is that it's a self-managing board. I think the exact scheme of the legislation is that the self-managing group has majority representation on the board.

To put it in context of the scheme of the legislation, first of all, there's the designation of the act to be administered or part of an act. Second, there's the negotiation of the administrative agreement, and part of those negotiations of course would relate to the composition of the board. One might have consumer groups that would want representation, one might have various experts in amusement devices or whatever who might want representation on a board. That would certainly have to be something discussed between the parties negotiating the agreement, which is why subsection 8(2) reads, "The members appointed by the minister may include representatives of consumer groups, business, government organizations or such other interests as the minister determines," so that the minister is left in a position of being able to complete the picture of appropriate representatives on the board, still up to a minority.

I might mention also, with respect to Mr Crozier's concern, that the witnesses who raised this concern here were from the elevator industry and were concerned with the composition of the current interim board dealing with certification of elevator mechanics. It's not something that's in Bill 54, actually, although I understand their concern.

Mr Kormos: I'll ask legislative counsel. Is there a formula for what has to constitute the board of directors independent of section 8 and the government's power to appoint people to the board?

Mr Wood: On the basis of this bill, no, there is not a formula as to who sits on the board of directors of that administrative authority.

Mr Kormos: So you could be in a position where you're reliant upon a government to create balance — is that fair to say? — with the power, if it is valid, of section 8.

Mr Wood: I don't feel I can answer a question like that, as to balance. Balance is really a political —

Mr Kormos: It's a subjective thing. There's no direction, then, to the governing body, no guidelines, no map, no framework for at least the minimal or basic, threshold level of representation.

Mr Wood: I can say that in this section there is very flexible power; there aren't any firm directives. In subsection (1) it says, "The minister may appoint," so it's discretionary.

1750

Mr Kormos: That means that if a government were anti-consumer and pro-business, there would be no obligation on the part of the minister, obviously, to appoint or to ensure that anybody was on a corporate board who represented consumer interests; that the people who were appointed could be lame ducks or insignificant or in the back pocket of the government and business.

Mr Wood: To the extent that I can give an interpretation, I can tell you that the word "may" in both subsection 8(1) and subsection 8(2) implies complete, unfettered discretion unless there is something in the rest of the section that somehow fetters that discretion. Right now, there does not appear to be anything in the rest of the section that fetters that discretion.

Mr Kormos: Chair, I know we're speaking to the amendment of the official opposition, and I appreciate what they're trying to do. They're trying to develop this guideline, a formula for some balance. I don't agree with them on this specific one, but I think it illustrates the absence of any of that formula throughout section 8. I don't agree with there being a need to have equal union and non-union, though I understand the motive for it. But I think the whole of section 8 is really dangerous, really high risk.

Mr Kennedy: I also agree that section 8 is the crux of the credibility of this particular enterprise for the government. It seems to me that everything, from the composition in terms of a minority, which is where the government basically abdicates its interest if this is the route it chooses to take, to the use of the word "may" — if we're not able to say "shall" and at least have a token representation from consumer, business and government, we really have no basis under which to entrust these organiz-

ations with the public dollars and the public trust they're supposed to be taking forward.

Although as a new member I'm given to understand it's not a particularly fruitful enterprise, how might I fashion an amendment to that to find out the will of this committee?

Mr Wood: If you're addressing the question to me, Mr Kennedy —

Mr Kennedy: I am.

Mr Wood: — I can take instructions from you to present an amendment to this committee.

Mr Kennedy: The amendment I would like for subsection 8(1) would be to indicate that the minister does control the majority of the board. For (2) —

The Chair: Excuse me, Mr Kennedy. We're presently discussing Mr Crozier's amendment.

Mr Kennedy: Pardon me. I'll accept that ruling out of order, and I'll come back at the appropriate time.

The Chair: We'll give you an opportunity.

Mr Crozier: I guess we have agreement that we know the problem, we know the intent. I don't know whether this is the way to solve it. We have had representation from CEC Systems. I might mention for the record that there is a letter from Allan McLean, MPP, which brings note that from Magnum Elevator Co there is a letter which again brings this concern forward.

If proposing this amendment isn't the appropriate way to address it, I ask for some assistance. This goes to what my colleague Mr Kennedy brought up earlier today — and it may be going to the extreme the other way — the suggestion to one of the other presenters that perhaps the board should be so totally at arm's length that it shouldn't contain any vested interests.

We're trying to find some balance here and answer the concerns. As Mr Klees and others brought up, I agree, it may only be one company. Right now we're told about 28% to 30% of the industry is non-union. I suppose we could talk about three-to-one representation, union to non-union, but that may change as well. We're merely trying to address the problem.

Mr Flaherty: With respect to section 8, I should point out that which is fundamental, that is, that this is a self-management bill. If a majority of the directors were to be appointed by the government, by the minister, then the administrative agencies, and there will be more than one, would become government agencies, for many purposes, thereby defeating the purpose of the bill, which is why the bill provides that the limitation of the minister's appointments is to a minority.

The other point is that there is going to be a number of organizations, and each industry is different, as we've heard here with respect to union, non-union, with respect to numbers in the industries, large companies, small companies and so on. The idea of the legislation is to permit the minister to have the discretion in his negotiations with respect to each different industry to arrive at an appropriate board composition.

Mr Kormos: That's why I wish Mr Flaherty to come clean, because it's either self-management, in which case the government has no business appointing anybody to it, or it's going to be balanced by virtue of a framework,

none of which is articulated in the bill, or it's going to be a tool of the government.

Legislative counsel, I would ask of him, what happens — your articles of corporation, whatever they are, tell you you're entitled to X number of directors. Now, what happens if the corporate body itself fills those positions? The government's hands are tied, it seems to me, at that point, because how can the government appoint people when the bylaws of the corporation wouldn't permit any more directors? Do you understand that, Chair? Is it an unfair question? I don't know. It seems to me to represent inherent contradictions. This thing is a dog's breakfast.

Mr Parker: I can't take it any more. If the corporation isn't properly constituted, it's not going to get the powers delegated to it in the first place. So the question's a nice one to kick around but it's not terribly helpful in trying to assess this legislation.

The Chair: Could I suggest something? Could we stand this one down, because Mr Kennedy wishes to bring an amendment forward. It's going to take unanimous consent, so if I hear a no, that's fine. We'll just leave it for a moment, go on and then come back to it, because there is an amendment that you can work out. Does that sound fair? Is there an objection to that?

Mr Flaherty: Can we deal with the motion that's on the floor now, the one about union and non-union? I think that's been canvassed.

The Chair: We can deal with that and then I'll make the suggestion. Are there any further comments or questions in regard to Mr Crozier's amendment? If not, shall the amendment carry?

Mr Kormos: Recorded vote, please.

Ayes

Crozier, Kennedy.

Nays

Doyle, Flaherty, Guzzo, Hudak, Ron Johnson, Klees, Kormos, Parker.

Mr Kormos: We could sing Solidarity Forever.

The Chair: I thought that Mr Kormos had made the first mistake I'd seen him make.

Mr Crozier: You guys are in trouble; he's on your side.

The Chair: I'm suggesting that we set it down and proceed to the other sections. Is there any objection to setting it down? That is section 8. Okay, shall do.

Mr Klees: Might I just add a comment? I'd like to refer to the minister's statement.

The Chair: I'm sorry, we've set it down, Mr Klees.

Mr Klees: Okay. I thought it might be helpful for dealing with it.

The Chair: We're going to come back to it, so you're going to have your opportunity.

Mr Klees: Fair enough.

The Chair: We are now dealing with section 9, and in particular, there are two government motions. Mr Flaherty, would you —

Interjection.

The Chair: No, we've left it. We'll come back to it.

Mr Flaherty: I move that subsection 9(1) of the bill be struck out and the following substituted.

I'll explain this in a moment, I'll just read it first of all.

"Employees

"(1) Subject to the administrative agreement and subsection (3), a designated administrative authority may employ or retain the services of any qualified person to carry out any power or duty of the authority relating to the administration of designated legislation delegated to the authority, including the power to appoint persons under the designated legislation if the power is delegated to the authority."

What is happening there is that the words in the fourth line "except a crown employee" are being deleted by the motion. The reason for that — and there's a further proposed amendment to subsection (3) — is to permit crown employees who are on assignment who are seconded to be employed by ministry businesses.

The Chair: That's good old plain language for you. 1800

Mr Kormos: It's also part of what the real thrust of this bill is all about. This is scab legislation. It's anti-union legislation. It's designed to gut the OPSEU staff at consumer and commercial relations, because Mr Flaherty asked us to look at his amendment to subsection (1) in light of the amendment, which is the inclusion of subsection (3), and it indicates that a crown employee who accepts employment in addition to being in assignment to, that is to say, seconded, shall be deemed not to be a crown employee for the purpose of this section for the period of the employment. That's been seen in a few other places over the course of the last 12 months.

Clearly the government is gutting the Ministry of Consumer and Commercial Relations and wants to negate in advance any possible arguments that could be raised about the previous employee of the government whose job is terminated with CCR who then may well be hired on by this new authority. This is similar to the stuff that's being proposed to replace the LLBO and the Ontario Gaming Commission with their arm's-length agency where they want to be very certain that nobody has successor rights as they move on into the arm's-length agency. I'm certainly opposed to this. This is not what it appears to be, but at the same time, having said that, it's everything that the bill is all about.

The Chair: If there are no further questions or amendments —

Mr Flaherty: May I just reply very quickly to that in terms of it being anti-union? In the absence of the amendment, OPSEU members who worked for the provincial government would not be able to take these jobs with these administrative authorities, so I don't see how it's an anti-union provision. In fact, it preserves job opportunities.

Mr Kormos: Bull-crap, Mr Flaherty, because if OPSEU members still had jobs with the government, they wouldn't be looking for jobs with the new agency or authority. It's only going to be the OPSEU members whose jobs you and your government are killing who are going to be in a position to be looking for other employment.

Mr Flaherty: You used to have a job with this ministry, didn't you?

Mr Kormos: That's right, and it's a shame that we weren't there long enough to implement public auto insurance, but that's an old line. I'll have to wait for the next round.

Don't try to pull that stunt on us. You know darned well that's doublespeak. If an OPSEU worker in the Ministry of CCR still has a job with the Ministry of CCR, that OPSEU worker ain't going to be looking to work with this new administrative authority, and what this does is make sure that an ex-CCR employee doesn't try to raise the argument of the administrative authority being a mere artifice in terms of whether or not that person continues to really work for the government, because the two roles are parallel. This is identical to the stuff that's happening with the elimination of the gaming commission and the Liquor Licence Board of Ontario where both OPSEU and OLBEU members are being attacked, and that's the purpose of this amendment. Please, Mr Flaherty.

The Chair: Thank you, Mr Kormos.

All those in favour of the motion of Mr Flaherty amending 9(1)? Against? There is no recorded vote. Carried.

Mr Flaherty, you have a second motion?

Mr Flaherty: Still dealing with section 9, Chair.

I move that section 9 of the bill be amended by adding the following subsection:

"(3) A crown employee who accepts employment in or assignment to an administrative authority shall be deemed not to be a crown employee for the purpose of this section during the period of the employment or assignment, as the case may be."

The reason for this — it relates to crown liability — is to avoid an agency relationship between the government and the agent or agency being considered a crown agency, so it deals with the liability of the crown for the individual who would probably be seconded or on assignment, which are categories of status recognized under the Public Service Act of Ontario.

Mr Kormos: Thank you. That's exactly what I just said. If only you had turned the page five minutes sooner, Mr Flaherty.

The Chair: If there are no further questions, all those in favour of the motion? Carried.

All those in favour of section 9, as amended?

Mr Kormos: Chair —

The Chair: You didn't ask for a recorded vote.

Mr Kormos: No, no: All in favour, and then all opposed.

The Chair: I counted a majority. I didn't know which way you were going to vote, Mr Kormos. It didn't matter in that case.

Mr Kormos: That's an interesting reflection of the process.

The Chair: Section 9, as amended. All those in favour of section 9, as amended? All those opposed? Thank you.

We are now dealing with sections 10 to 14, inclusive. Questions or comments?

Mr Crozier: It's more or less a comment and it goes back to what was just said a moment ago about appoint-

ing a crown employee so that it won't be — a crown employee who accepts employment shall not be deemed to be a crown employee.

The Chair: Sorry, which section —

Mr Crozier: We're talking about section 11, crown liability. It was referred to just a moment ago in section 9. I realize that it says, even in the second paragraph, or at least in the description of section 11 it says in the second paragraph, "This is a standard provision limiting crown liability." For example, similar provisions exist in the Energy Act, the Elevating Devices Act and the Gasoline Handling Act.

I only want to make the point that, particularly in the area of public safety, by moving to this private inspection, I think that the government is abdicating its authority and it's going to be interesting to see how these not-for-profit private corporations that are in the inspection business then insure themselves. I can see liability insurance premiums that may even, although perhaps not, make auto insurance premiums pale by comparison.

The Chair: Are there any other comments? Shall sections 10 to 14, inclusive, carry? All those in favour? All those opposed? Carried.

We have an amendment proposed for section 15 by the government.

Mr Flaherty: I move that clause 15(1)(c) of the bill be amended by inserting "and expenses" after "costs" in the seventh line.

The purpose of this amendment is to allow administrative authorities to recover all related expenses in proceedings which they undertake.

The Chair: Are there any comments or questions in regard to that?

Mr Kormos: This seems to me to be — when you're talking about regulations that the Lieutenant Governor in Council can make, so be it. What are you talking about when you talk about recovering costs from the parties?

Mr Flaherty: I think the concern has been that the word "costs" may be too narrow and that "costs and expenses" is broader. In some places "costs," as you know well in our court system, has a restrictive definition.

Mr Kormos: So you're contemplating then the prospect of recovering costs against a consumer who initiates a process by way of complaint?

Mr Flaherty: No, this is within the industry. This might be, for example, a real estate broker being the object of a proceeding or prosecution or somebody else within one of the designated industries.

Mr Kormos: How does that not include a consumer who makes a complaint on whose behalf the proceeding is initiated?

1810

Mr Flaherty: It's designed for the bad guys. It's designed for when they go after the bad guys, and it is an issue which is often raised with respect to other consultations. It was raised here actually by the witness from CRAT about the difficulties people have accessing systems of administrative justice because of costs and not being able to recover their costs. The purpose of this is to act as a further discouragement to the bad guys by making their financial exposure greater. That is, they'd be

liable not only for costs in the traditional sense, but also for other expenses incurred by the administrative authority in its enforcement function.

Mr Kormos: I hear you, but it looks pretty strange to me.

The Chair: Are there any further comments or questions in regard to the proposed amendment moved by Mr Flaherty? If not, all those in favour? All those opposed? Carried.

Shall section 15, as amended, carry? All those opposed? Carried.

Are there any questions or comments in regard to sections 16 to 28, inclusive?

We are dealing with sections 16 to 28, inclusive. Any questions or comments? If not, shall the sections carry? All those opposed? Thank you. Carried.

Now we're proceeding and reverting back to section 8. Mr Crozier.

Mr Crozier: For Mr Kennedy; it was necessary for him to leave. I believe you have copies of this motion. With reference to subsection 8(1) of the bill, I move that subsection 8(1) of the bill be struck out and the following substituted:

"(1) The minister shall appoint at pleasure one or more members to the board of directors of a designated administrative authority so that the members appointed by the minister constitute a majority of the board."

Would you like me to speak to that?

The Chair: Yes, that's a properly moved motion.

Mr Crozier: It was interesting to note that perhaps one or more members on the government side thought that in fact the minister had this authority to appoint a majority of the board, and I think Mr Kennedy thought there might be some support for the fact that the minister could appoint a majority of the board.

Mr Ron Johnson (Brantford): I think again it goes back to what Mr Flaherty had said earlier, that sort of defeats the entire purpose of the legislation in that these are self-regulating bodies and should be made up in large part by either the consumers or the people in the industry.

Mr Kormos: I think I understand where Mr Crozier's coming from; I know he sits on the committee that reviews government appointments and I appreciate his intent, but in view of the dogs and Tory hacks that are running through that committee for appointments of this nature, I'm quite frankly concerned about the way this government is exercising this appointment power, having this power.

The Chair: Mr Crozier has two amendments. The first one is before us that he has read into the record. Any other questions or comments? If not, all those in favour of the motion? Do you wish a recorded vote? All those in favour of the proposed amendment by Mr Crozier? All those against? The motion is defeated. Mr Crozier, will you be proceeding with the section portion?

Mr Crozier: Yes.

The Chair: Thank you. If you'd read it into the record.

Mr Crozier: I also told my colleague that if these were successful I would help take some of the credit and if they weren't, I'd make the committee know that there are his motions. But we are a team. I move that subsec-

tion 8(2) of the bill be amended by striking out "may" in the second line and substituting the word "shall."

Mr Kormos: I want to indicate my support for this amendment, although I'll be voting against section 8 in any event because, as I've indicated earlier, I think it goes to the crux of it and the whole structure fails as a result of it. Clearly the intent of subsection 8(2) is to require the minister to ensure balance. It addresses the vacuum that we talked about earlier and that is that there is nothing in the bill that would insist there be a balance in the board structure of these respective agencies and I think that's imperative, so I appreciate the intent of this and I think any fairminded, reasonable person would. I intend to vote for it.

The Chair: Are there any other comments or questions? If not, shall the amendment carry? All those in favour of the amendment? All those against? The motion is defeated. The amendment is defeated and we will now proceed to section 8 which was —

Interjections.

The Chair: Yes, Mr Klees. We're dealing with section 8 now, as amended. Are there any questions or comments?

Mr Klees: Yes, there are.

The Chair: Please proceed.

Mr Klees: With your permission, I would like to take a run at this section 8 as well. I realize that this is not the norm but I want to pick up on Mr Crozier's issue with regard to the balance that was raised by a number of presentations. Might I propose an amendment?

Mr Kormos: The parliamentary assistant — the body language is incredible.

Mr Klees: The worst that's going to happen is that it will be voted down.

Interjection: No, it could be worse than that. Peter could vote with you.

Mr Klees: Let me propose this: I move that section 8 of the bill be amended by adding the following subsection:

"Fair and balanced representation

"(2.1) In appointing representatives under subsection (2), the minister shall ensure that fair and balanced representation of all interests and industry sectors is in place."

The Chair: Mr Klees has moved a motion that the minister shall do certain things which, I assume, Mr Kormos, would be under judicial review by the statutory procedures act. In any event, questions and comments?

Mr Flaherty: There are several concerns. I'll speak against the motion for these reasons. The minister may only be obliged to appoint one person to a board under the way it's drafted right now. I can start there. The other part of it, and I think you've contemplated it with reference to the Statutory Powers Procedure Act: This would impose a duty on the minister, appointing a minority of board members to ensure fair and balanced representation of all interests, whatever that means, and industry sectors.

It would also make relatively meaningless, it seems to me, the negotiation process which is imposed by clause 4(2)(b) of the legislation, that is, provision for the composition of the board of directors of the administra-

tive authority is to be part of the negotiated administrative agreement. So without having the composition of the board known in a particular industry, and we're dealing with more than one industry, it would seem to me this would be onerous on the minister and might well result in review of the minister's decision on a rather difficult ground that the minister appointing perhaps only one board member would be obliged to represent all interests, whoever they might be.

Mr Kormos: Firstly, I want to indicate that it's an interesting amendment. Secondly, I want to indicate that it was kind of fun to watch the parliamentary assistant, who I presume is also whipping his caucus, darn near swallow his bubble gum when Mr Klees read the amendment. But I think — wait a minute — I think Mr Klees is on to something, because it's almost as if there's a residual appointment by the government because Mr Flaherty says that, by and large, they want the industry to be responsible to make up the board. What this suggests to me is, this amendment says that if the government's going to appoint people, it has to appoint people with the goal in mind of perhaps not creating balance but reaching towards balance. In other words, the government goal in appointment is, if it observes that a board is overly industry-dominated, then this amendment would seem to call upon the minister to appoint people to create, let's say, a consumer balance, or vice versa.

1820

I think this retains a whole lot of individual power in the ministry itself, and flexibility, but very fairly and adequately defines the role of the minister and I bet you that if you asked a couple of assistant deputy ministers, bureaucrats if you will, they would find your amendment, from their professional perspective, to be a highly appropriate one.

I think that is an interesting amendment. I think it's one the committee should consider in the interests of making this bill work a little better and I seriously thank Mr Klees because he's done a little bit of a balancing act, and by God, this committee process that we're in right now just might start working if people told their whip to go pound salt once in a while and really fulfil their responsibilities to their constituents and to their conscience by genuinely participating in this kind of dialogue, listening to the input that, as in this case, Mr Klees provided, and exercise some power around here. The whole system may end up being a little bit more democratic and a little bit fairer and, although I don't want to prejudice Mr Klees in any way, I suspect, subject to further debate, that I am going to support that.

The Chair: It's surprising how democratic our party is. I'm very proud of it.

Mr Crozier: We shall see. I also appreciate Mr Klees's attempt to assist us in this manner. I think we all understand the intent behind this and we're searching for a solution for it and, therefore, I appreciate this attempt and I'll be supporting it as well. Just a comment about the parliamentary assistant's suggestion that this may make the minister's job more difficult: Frankly, I don't care. If it is more difficult perhaps he'll then better deserve his \$130,000 a year or so.

Mr Kormos: Is it \$130,000?

Mr Crozier: Who cares?

Mr Flaherty: In dealing with the practicalities, if I may for a minute, of the legislation — we're dealing with real estate agents and brokers and the travel industry. It's quite directed in the legislation. So when we're dealing with the safety organization this amendment would require a rather large board to represent all the interests that would be involved in that safety organization. As I say, I don't mind the minister working hard, of course, but I don't think the onerous duty should be placed on him which might well not be capable of being satisfied without a board of 40 or 50 people.

Mr Kormos: I can't understand how you would respond that way when there appeared to be a general agreement that the intent of this was to say that if the minister — the minister, as I understand it, doesn't have to appoint anybody to a board. But if the minister is going to exercise the power to appoint somebody to the board — somebody or somebodies — then the minister has to do so with the goal in mind of correcting an inherent imbalance or surely not creating a greater imbalance. That's not to say he or she has to create balance, but that the type of appointment has to be such that it doesn't aggravate the imbalance but rather tends towards generating balance.

That's as I understood it coming from Mr Klees, so your comments don't apply. It doesn't mean the minister is obligated to create balance; it means that if there are nine industry reps and the minister is going to think about appointing somebody, he'd better start thinking about a consumer rep.

Mr Klees: Subsection (2) is the subsection that deals with the appointment and it, in effect, indicates that the minister may appoint. This is a follow-up to that and it's simply saying that when appointments are made under subsection (2), certain considerations or certain balances should be taken into consideration. So I don't think this in any way suggests that every interest must be taken into consideration, because subsection (2) deals with that.

The Chair: If there are no other comments or questions, shall Mr Klees's motion of amendment carry?

Mr Kormos: Recorded vote, please, sir.

Ayes

Crozier, Guzzo, Klees, Kormos.

Nays

Flaherty, Hudak, Ron Johnson, Parker.

The Chair: In keeping with the fine tradition of committees, I of course have to vote against this as the deciding vote.

Mr Kormos: One moment, if I may, to talk about the fine tradition of committees.

The Chair: I am informed that's the tradition of committees where a bill proposed by the government is requested to be amended. I would do the same if it were in fact in opposition.

Mr Kormos: But, Chair, we've had a revolution. We've been told that. We've been told that. June of — Chair, please, if I may.

The Chair: Mr Kormos, are you disagreeing with my decision? I just want to get your position.

Mr Kormos: In June 1995 we had a revolution. We also, we were told, had an injection of common sense. I appreciate that it wasn't the Reform Party that took power in the province, but I understand there are more than a few of the government members who hold Reform cards federally to accompany their provincial Tory memberships. They've spoken to me about it. Some are very outspoken about it. It seems to me, Chair, that it's about time for you as Chair to break with tradition and to vote with your conscience and with your common sense.

You know full well that Mr Klees has presented here — and you'll note who he received support from. He got support from Mr Guzzo from Ottawa, a fairminded member of the committee, and he got support from Mr Crozier. He got support from myself. He's turned what was a very partisan and sometimes divided committee into something that has the capacity to be united and to work in a non-partisan way in the interests of Ontarians. I urge you, Chair, to recognize the power you have. You have this power to reject tradition in the way that Mike Harris rejected tradition in June 1995. Please, Chair.

Mr Parker: He didn't reject tradition, Peter.

The Chair: Thank you, Mr Kormos, but if I don't vote at all, the motion is defeated in any event because there isn't a majority. So the motion is defeated. We are now proceeding to —

Mr Kormos: Which way did you vote?

The Chair: In section 8, the only amendment that passed was the French-language amendment moved by Mr Flaherty. Shall section 8, as amended, pass? All those opposed? Section 8, as amended, passes.

We are now on to the schedule to the bill. Are there any comments or questions in regard to the schedule at the end of the bill? If not, shall the schedule carry? All those opposed? The schedule is carried.

Shall the long title of the bill carry? All those opposed? The long title carries.

Shall the bill, as amended, carry?

Interjections.

The Chair: I'm sorry. Questions or comments?

Mr Kormos: I want to speak to the bill, obviously.

We heard during the course of two brief days — and you should know that there was a submission made by the Consumers' Association of Canada, because I know the Chair received it. It was addressed to the Chair and to committee members. Here's the Consumers' Association of Canada, who one would expect to have been a party to consultation regarding this bill, and they've indicated that the invitation to participate came only after the law was already drafted, so there was no consultation with the Consumers' Association of Canada prior to this bill being presented. The invite, further, came only five days before the legislative hearings on Bill 54.

1830

I know that each of the three caucuses was invited to produce a list of participants in what consisted of a mere two afternoons of hearings, but that deal was struck at such a time by the House leaders that there was precious little notice given to interested parties. The Consumers'

Association of Canada points out that only the richest organizations with full-time employees could afford to produce a carefully researched brief in such order. This method of consultation, the one this government has chosen, guarantees that legislative privileges will be designed for the wealthiest special-interest groups or for anyone with favoured early access to the drafting of legislation.

The consumer association goes on to laud the government in its approach to insurance reform. The consumer association recognizes that the government, without having prepared a bill, went to the public to talk about problems under the status quo with respect to the insurance legislation. As you know, I was fortunate to have participated in that at a modest level, and while it wasn't the most open-minded of consultations, I have to concede that the government came forward with what was merely a draft as compared to a bill that had already passed second reading. The Consumers' Association of Canada criticizes the procedure with Bill 54 in contrast with what the government did with the auto insurance legislation, and that was of course led by Mr Sampson.

I am concerned about the lack of consultation prior to the drafting of the bill. It was strange. All these folks who came before this committee in the modest two days and we didn't really ever get a detailed understanding of how the government came about with this proposal.

You heard the minister here yesterday afternoon during his 20-minute slot reading the prepared text which said with great fanfare that this was all about reducing red tape. Now, that's got some spin. A whole lot of money has been spent on focus groups by the government caucus, and on polling and surveys, a whole lot of taxpayers' money, to determine that the red tape phenomenon is something that has some currency with the public out there.

What we find out, though, when we have parties before us who have direct involvement, in almost all cases as regulated industries, professions, quasi-professions, and we ask them, "Where's the red tape that the government's going to get rid of?" there's precious little to respond. What it amounts to is having to fill out an application once every year or two and sending it in with your money and getting your licence in the mail. The groups that appeared before us said, "Well, yes, I guess that's what the government must mean when they talk about red tape." So we're not talking here about a process that eliminates red tape.

Mr Daniels, the ADM, when the minister called upon his expertise because the minister was floundering a little bit and he reached out to a bureaucrat, and bureaucrats know they're going to survive any number of ministers and bureaucrats don't mind being life buoys for briefs periods of time for ministers, says, "At the end of the day, a privatized regulatory body can use electronic filing." I presume it's the same sort of thing as when my accountant does the income tax and instead of filling out a form, he zaps it into whatever it is. I've asked him not to do that, because when you do the electronic filing with your income tax, it takes work away from PSAC employees, so I've instructed my accountant to file my income tax in written form and, quite frankly, I'll be

encouraging every businessperson I know of to be using written forms to ensure that jobs are a part of this process.

But the assistant deputy minister said that's what it's going to do and seemed to acknowledge that the government could be doing that itself. It would be just as easy for the government, this revolutionary government, this commonsensical government, to be investing in that type of electronics or hardware that it seems these respective regulatory bodies are going to have to buy so that people can electronically file with the Ministry of Consumer and Commercial Relations as it exists now. So the red tape argument is bogus. It's chimerical. It's a scam. It isn't there, and that's what witnesses before this committee told us.

Then we have to go on to see whether it's going to save anybody any money. Now, that's where we really got into some interesting discussion. The minister was darned glad, you can count on it, that there was only an hour allocated to the minister's presence here, 20 minutes for his presentation and 20 minutes for each of the two opposition caucuses. Because, Chair, you know, I could see the glint in your eye as the minister was starting to flounder. As he was treading water and sinking deeper and deeper, I could see by the glint in your eye that you too recognized that he was happy to get out of here because you saw, as did everybody else on the committee, the minister obfuscating when it came to things like the number of jobs that are going to be lost at the Ministry of Consumer and Commercial Relations.

The minister says he doesn't know. The staff say they don't know, the managerial staff. These are the high-priced ones. These aren't the ones that are going to get cut. These are the high-priced ones. Well, that's very strange, because how can you approach this without knowing how many staff are involved in the delivery of these services?

We were given by Mr Daniels, who is the assistant deputy minister, some numbers, which I have no reason to disbelieve, about the gross revenues and net revenues when it comes to the three areas specifically of regulation. In the real estate area, \$4 million gross revenues and a cost of \$1.5 million, so a net of \$2.5 million. In travel, much narrower, a much closer profit margin, but still a gross of \$400,000, we're told, and a cost of \$287,000. In the motor vehicle end, you're talking big bucks here.

The other interesting thing is, the minister blew it for just a minute. You'll recall that the minister started talking about these millions of dollars as being, oh, but a small percentage of the overall cost of government, and I saw a couple of the government caucus member wits grimace when the minister did that, because they recognized that he made the major faux pas of a whole lot of liberal type politicians when they try to dismiss cost by saying, "Oh, but it's so little in the total scheme of things." That's exactly what the public is sick and tired of hearing.

In any event, we're left with approximately \$4.9 million in lost revenues, net revenues, if the ministry is no longer in the business. That was put to the minister, Chair. You were here. I know you were. That was put to the minister and he said no, even though the regulatory

responsibility is going to pass on to these corporate bodies, these administrative authorities, which are supposed to be fully funded by the industry they regulate, the government was only going to suffer, at the worst, a marginal reduction in the net revenues. How can it be that the government's profit margin isn't going to be impacted here, the profit line of \$4.9 million, when the industry is going to be fully funding a non-profit administrative authority to do the regulatory process? Somebody is going to get whacked twice, because you can't fund the administrative authority and still pay the full revenues to the government unless you're being hit twice and unless you're paying more.

So now we have this scenario where this industry that's going to be regulated, be it the motor vehicle dealers, be it real estate, be it travel agents, it's going to end up paying more, which means their consumers are going to end up paying more, and at the end of the day, hard-pressed people here in the province of Ontario are going to be gouged again.

That leaves one with the necessity of contemplating as to what the real motive is here, because everybody agreed that there is really nothing inherent in the administrative authority structure that the government is proposing in this bill that made the administrative authority more efficient than what the Ministry of Consumer and Commercial Relations was. I mean, heck, we had the minister here. If he wanted something to change within the authority of the ministry, he could have it changed. It's as simple as that. He's got very competent bureaucrats over there who are designed to implement the sorts of changes that a minister of the government of the day tells them to do.

1840

I'm left with the irresistible conclusion that two things are happening here: One, the government doesn't give a tinker's dam about consumer protection here in the province of Ontario. We're witnessing the gutting of consumer and commercial relations. Mr Sterling, at the end of the day, won't be transferred; his ministry will simply disappear. We see that happening not only with this bill but with the so-called merger of LLBO, a part of LCBO, and the gaming commission, as an illustration once again of how the ministry is being gutted when that's being transferred over into an arm's-length agency.

Two, the government is hell-bent on depopulating the public sector workforce and destroying OPSEU or OLBEU or any other unionized workforce that is in the public sector. That's where we got into those discussions about making it clear that — oh yes, section 9. That anticipates the argument that they really are crown employees, even though they are working for one of these administrative authorities. The government knows full well what they're doing: They're tearing at the guts of organized labour within the public sector and they're abandoning consumers and, as Mr Little from the Ontario Public Service Employees Union indicated, leaving very much the fox to run loose in the chicken coop.

The New Democratic Party, needless to say, will not be supporting this legislation, either here in committee or in the House. This legislation is an abandonment of the responsibility of any fairminded government to protect consumers against predators within any one of a number

of industries. It's an abandonment of that responsibility. It says: "To hell with you, Jane or John Public, Jane or John Taxpayer. You go out there and you're on your own." It also very much attacks public sector workers here in this province of Ontario. As I say, we will not be supporting this.

I also indicate that section 8, I believe, with all due respect, Chair, is very, very flawed and is going to lead to a whole lot of grief down the road when the minister cannot exercise his power because a board of directors may well have been filled by the corporate body itself, which means the minister can't add any people to the board. Bill 8 is going to rear its ugly head down the road, as I think you indicated as well in some of your comment, albeit in an unbiased way as Chair. I think it's interesting to be able to put this committee on notice in that regard so that people who want to litigate around Bill 8 can refer to the fact that it was raised right here in committee before the bill went back to the House for third reading and that everybody was put on notice that Bill 8 is badly flawed. What we have here is, as indicated earlier, a dog's breakfast.

It ought to be, as the Consumers' Association of Canada, I believe, suggested — sent back to where it came from, and let this government get involved in a meaningful inquiry with the public as to what type of consumer protection is needed here in the province of Ontario.

We haven't seen a consumer protection act during the course of one, two — now this is the third government that has been delinquent in that it has failed to deliver a Consumer Protection Act. I make no excuses for the last government or, quite frankly, the government before that, not that I should ever have to think of excuses for the government before that. But here we are with the third successive government that's failed to deliver on an initiative that dates back to 1987, and that is a meaningful Consumer Protection Act here in the province of Ontario.

I'm confident that if this bill is passed, with the privatized regulation of these industries, among others, we're never going to see consumer protection until the next election and the next government.

Mr Crozier: I'd just like to make a few closing remarks, and I'll attempt to be brief. A person gave me some advice one time and said that more people have talked their way out of this place than into it.

I might say at the outset that we don't have a great deal of trouble with those parts of this bill that deal with the Upholstered and Stuffed Articles Act. As I said earlier in the Legislature, it's time we were able to rip that little white label off and not feel guilty.

The Cemeteries Act, the Motor Vehicle Dealers Act, the Real Estate and Business Brokers Act and the Travel Industry Act: Although we have voiced some concern in those areas, certainly with the appropriate diligence we may find over time that those areas can very well be self-administered and very well take care of themselves. But I must say that in the way of the Amusement Devices Act, Boilers and Pressure Vessels Act, Elevating Devices Act, Energy Act, Gasoline Handling Act and the Operating Engineers Act, we do have concerns when it comes to public safety.

I agree with my colleague Mr Kormos that when it comes to red tape, it's incorrect to let anyone think there'll be less red tape, because what we are saying is that we don't inspect elevators enough, perhaps we don't have enough inspectors, we don't look carefully enough from the government's standpoint at public safety. The only thing I can imagine is that there's going to be more intervention, there'll be more inspections and it will be more closely looked at, and this very well might be interpreted by business to be more red tape.

Mr Kormos and my colleague Mr Kennedy addressed the lost revenue, and yet the minister comes before us and says there isn't going to be any lost revenue. We know that industry representatives who came before the committee couldn't understand that. They think it's going to cost less money. Well, somebody's wrong.

I suggest that the way the minister approached this yesterday was — frankly, I'm not sure whether the minister knows. I'm not sure whether anybody here knows whether there is going to be lost revenue, whether there's going to be less cost to the industry. If the government's giving up several millions of dollars and the minister says it will be a wash, they're going to collect those several millions of dollars somewhere else, and if the industry is going to become more diligent and provide more inspection services and be more concerned about public safety, then I suggest it's going to cost the industry more money in that area. I certainly wish, in this short period of time we've had, that somebody would have been able to tell us what is going to happen.

I think this really is a case of a further attempt at reducing government at any cost, and in this case I think it's at the cost of consumer protection. This government — your government, Mr Chairman, and my colleagues across — is bent at any cost on being able to say at the end of the day there's less government out there. Notwithstanding the fact that it may cost people more money and there may be more red tape, there will be fewer employees and therefore less government.

I'm sorry this bill wasn't presented not so much as the omnibus bill that it is so that we were able to take those areas that could be dealt with more expeditiously — although the whole thing has been dealt with more than expeditiously — like the Cemeteries Act, the Motor Vehicle Dealers Act and others, and handle them separately and then give more time, effort, planning and concern to the parts of the act that deal with public safety.

I think the public's going to be disappointed in the long run in this. I think we're going to have some evidence down the road that things are not better. We'll simply, I guess, at this point have to keep our eye on it.

The Chair: If there's no further comment, shall Bill 54 as amended carry?

Mr Kormos: A recorded vote, please.

Ayes

Doyle, Flaherty, Hudak, Ron Johnson, Klees, Parker.

Nays

Crozier, Kormos.

The Chair: Shall I report the bill, as amended, to the House? All those in favour? All those opposed? Carried. There's one other motion. Mr Johnson.

Mr Ron Johnson: I move that for the purpose of the committee business over the summer recess, the Chair and the clerk, in consultation with the subcommittee, shall have the authority to make all arrangements necessary for the orderly consideration of all matters referred to the committee.

The Chair: I thank all members of the committee and will see you in August.

Clerk of the Committee (Ms Donna Bryce): You need a vote on that.

The Chair: I'm sorry. All those in favour? Carried, unanimously.

Mr Ron Johnson: I know it was a good motion, but we still have to vote.

The committee adjourned at 1851.

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Crozier, Bruce (Essex South / -Sud L) for Mr Conway
Flaherty, Jim (Durham Centre PC) for Mr Leadston
Kennedy, Gerard (York South / -Sud L) for Mr Chiarelli
Kormos, Peter (Welland-Thorold ND) for Mr Hampton

Clerk / Greffière: Donna Bryce

Staff / Personnel: Michael Wood, legislative counsel



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Journal des débats (Hansard)

Mardi 6 août 1996



**Standing committee on
administration of justice**

Alcohol, Gaming and Charity Funding
Public Interest Act, 1996

**Comité permanent de
l'administration de la justice**

Loi de 1996 régissant les alcools,
les jeux et le financement
des organismes de bienfaisance
dans l'intérêt public

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LEGISLATIVE ASSEMBLY OF ONTARIO
**STANDING COMMITTEE ON
 ADMINISTRATION OF JUSTICE**

Tuesday 6 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
**COMITÉ PERMANENT DE
 L'ADMINISTRATION DE LA JUSTICE**

Mardi 6 août 1996

The committee met at 1302 in room 151.

ALCOHOL, GAMING AND CHARITY
 FUNDING PUBLIC INTEREST ACT, 1996
 LOI DE 1996 RÉGISSANT
 LES ALCOOLS, LES JEUX
 ET LE FINANCEMENT
 DES ORGANISMES DE BIENFAISANCE
 DANS L'INTÉRÊT PUBLIC

Consideration of Bill 75, An Act to regulate alcohol and gaming in the public interest, to fund charities through the responsible management of video lotteries and to amend certain statutes related to liquor and gaming / Projet de loi 75, Loi réglementant les alcools et les jeux dans l'intérêt public, prévoyant le financement des organismes de bienfaisance grâce à la gestion responsable des loteries vidéo et modifiant des lois en ce qui a trait aux alcools et aux jeux.

The Chair (Mr Gerry Martiniuk): This is the standing committee on the administration of justice consideration of the Alcohol, Gaming and Charity Funding Public Interest Act, 1996. We will initiate with a statement by the Honourable Norman Sterling, Minister of Consumer and Commercial Relations. Welcome, Mr Sterling. I would request that you proceed.

MINISTER OF CONSUMER
 AND COMMERCIAL RELATIONS

Hon Norman W. Sterling (Minister of Consumer and Commercial Relations): First of all, it's a pleasure to see you all back here at Queen's Park. I know you're all anxious to get back to work, as we all are. Nice to see all these cheery faces here that are going to support me so strongly in this endeavour.

We hope these public hearings will draw the people who are interested in all the aspects of Bill 75. I'm sure there will be various points of view with regard to several parts of the bill, but I guess more importantly, there will be a varying number of views with respect to how the bill will be implemented in its final stage.

Because the bill is in a lot of ways an enabling piece of legislation, it will lead to many, many questions as to how these things are going to work on the ground. Unfortunately, we will not be able to be in a position to answer all of your questions, but we will try to answer them to the best of our ability at this time as things are evolving over this summer period to come to a conclusion on some of those very important implementation questions.

I welcome all members of this committee who have given some time of their summer to be involved in the debate and I look forward to their suggestions on Bill 75. I'd particularly like to thank my colleague from Durham Centre, my parliamentary assistant, Jim Flaherty, who will be carrying the bill for the duration of the public hearings. I look forward to the results of hearing from the various parts of Ontario with regard to this bill. I know you are familiar with Mr Flaherty, and his ability is, I believe, superior in dealing with issues in my ministry. I think he can do the job better than I, and that's why I have delegated this to him. Besides which, he spent the last two weeks in Ireland.

On May 7 of this year, in our government's first budget, the Minister of Finance announced a number of initiatives that would break new ground in Ontario's gaming marketplace. He spoke about the situation currently facing the charitable organizations in our province, which depend upon revenues from charitable gaming to fund their activities. He said:

"Local charities often have limited financial resources that prevent them from doing all the things they would like to help their neighbours and others in need.

"Many charities depend on charitable gaming as a source of vital funding for their efforts. But under the current arrangements, too little of the revenue from these games actually flows to charities. In addition, many current charitable gaming activities are difficult to regulate and control, placing their integrity at risk."

Bill 75 sets the stage for the government's gaming initiatives announced on May 7. The first step in the process is to bring additional control to Ontario's gaming marketplace by providing a regulatory framework that will be able to properly address these new directions.

Consequently, the first part of Bill 75 — a standalone act with the title the Alcohol and Gaming Regulation and Public Protection Act, 1996 — deals with the establishment of the Alcohol and Gaming Commission of Ontario. The new organization is created by merging the present Liquor Licence Board of Ontario and the Gaming Control Commission. In addition, it takes on some regulatory functions of the Liquor Control Board of Ontario.

This will result in:

A single schedule 1 agency that will be able to focus more clearly on enforcement measures relating to gaming and beverage alcohol laws in general in Ontario and which will, as I have indicated, be structured to provide more efficient regulatory control over Ontario's new gaming initiatives announced in the May budget.

The restructuring will amalgamate licensing functions into one organization that should lead to greater efficiencies and better customer service.

The move will also support our government's continuing effort to cut red tape and eliminate duplication in our agencies, boards and commissions.

And, by transferring certain regulatory functions from the LCBO to the new Alcohol and Gaming Commission, we will ensure that the LCBO does not maintain potentially conflicting roles acting both as regulator and retailer.

Some of the activities that will be transferred from the LCBO to the new Alcohol and Gaming Commission include the regulation of private delivery services; authority over the establishment, location, hours and other conditions of operation of retail outlets; and the removal of LCBO control over the activities of other retailers. This move ensures that all regulatory measures concerning the sale and distribution of alcohol are centralized in one organization and in an organization other than the LCBO itself.

The merger will also lead to cost management benefits. As an example, some savings will be realized for the obvious reason that we will require only one chair, one board and one senior management team rather than two chairs, two boards and two management teams. Similarly, we will be able to have one enforcement officer attend a single licensed premise that also has video lotteries to ensure both gaming and liquor licence regulations are being followed instead of sending inspectors from two separate organizations.

I would like to point out that similar mergers such as the one I'm proposing in Bill 75 have taken place in a number of other provinces. Alberta, Saskatchewan, Quebec and Nova Scotia all have sought efficiencies through amalgamating their liquor boards and other regulatory bodies.

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Also in his remarks on budget day, the Minister of Finance said:

"To assist Ontario's hospitality industry, the Ontario Lottery Corp will develop a plan to introduce a limited number of video lottery terminals at selected locations across the province.

"In recent years, the gaming marketplace has expanded dramatically, with numerous new products and activities which have made control and regulation difficult."

He went on to say, "It is anticipated that the establishment of a tightly regulated, government-managed VLT network, along with other measures announced in this budget, will counter illegal gaming activity, and impose some needed discipline and control into Ontario's gaming marketplace."

He went on to say, "We believe that VLTs, if implemented within tight regulatory controls and in limited-access environments, can meet a legitimate entertainment demand and provide a significant stimulus to the hospitality industry."

The second part of Bill 75 amends several pieces of existing legislation, including the Gaming Control Act, the Ontario Lottery Corporation Act and the Ontario Casino Corporation Act.

The purpose of these amendments is twofold. First of all, there are the enabling amendments which will permit video lotteries to be legally introduced into Ontario. But

alongside this, we are making other amendments to the Liquor Licence Act and the Liquor Control Act, as well as the Ontario Lottery Corporation Act, which will effectively place conditions at the very outset of their introduction upon the circumstances under which video lotteries will remain available to the public of Ontario.

Concern has been raised about the effect of video lotteries on our younger population. In this respect, we will amend the Liquor Licence Act to permit the revocation or suspension of a liquor licence when the licence holder or employee allows a person under the age of 19 years to play video lotteries or to be in areas where there are video lottery machines.

To meet the requirements of the Criminal Code and to ensure there is comprehensive government control over the network of video lotteries, the Ontario Lottery Corporation Act will be amended to make the Ontario Lottery Corp responsible for video lotteries under regulations of the Alcohol and Gaming Commission of Ontario. This amendment will also reinforce restricted access to areas designated for video lottery play and will prohibit play by persons under the age of 19 years.

To ensure that we have in place the strongest possible screening process for those who wish to become involved in video lotteries as suppliers of equipment and operators of charity gaming halls, the Gaming Control Act will be amended to require these individuals or organizations to be registered with the Alcohol and Gaming Commission of Ontario.

During the second reading debate in the Legislature, a view was expressed by the opposition party that the Gaming Control Commission would only play a generally passive role within the overall regulatory process. Let me assure you this is not the case.

Through the more efficient operations of the new Alcohol and Gaming Commission of Ontario, it will have responsibilities in the following areas: (1) registering the owners of the premises where video lotteries will be situated; (2) registering manufacturers and distributors of video lotteries; (3) registering individuals and companies which service video lotteries; (4) establishing the types of games permitted, rules of play and betting limits; (5) setting internal control standards on the handling and recording of moneys; (6) setting minimum standards for surveillance systems; (7) before any registrations are issued, background investigations of individuals and companies will be conducted to ensure they satisfy standards of honesty, integrity and financial responsibility; lastly, the Ontario Lottery Corp plans to maintain oversight of the video lottery network through central computer control, which will allow the constant monitoring of all games in addition to onsite inspection and maintenance functions.

Altogether, our proposals indicate very clearly that the introduction and operation of video lotteries by our government will be done in a more measured and tightly controlled fashion than any other jurisdiction in Canada. We are building in the necessary safeguards that we believe will help counter the illegal gaming activity in this province and that will bring a much-needed discipline and control to the Ontario gaming marketplace as a whole.

We will also direct that 2% of the gross revenues from video lotteries will be dedicated to support the problem of gambling and that a strategy of public awareness education and research and prevention will be undertaken.

As I mentioned during my second reading statement in the Legislature on June 24, Mr Tibor Barsony, executive director of the Canadian Foundation on Compulsive Gambling, issued a news release on May 8, following the budget, in which he said, "A light finally begins to shine at the end of the tunnel." He went on to say, "The government's setting aside of 2%, estimated to be some \$9 million per year, represents a very important step in recognizing and beginning to deal with this problem."

Many further details with regard to how and when video lotteries will be introduced will be clarified when the Ontario Lottery Corp finalizes the implementation plan later this fall.

Mr Bruce Crozier (Essex South): A point of order, Mr Chairman: I've hesitated all along to interrupt the minister, but there was a pause. Does the minister plan to have a copy of the statement for the opposition?

Hon Mr Sterling: I can give you a copy, sure.

Mr Crozier: I'd appreciate it.

Hon Mr Sterling: I believe many of the presenters before this committee will be providing input towards that end, but let me assure you that these public hearings will not be the last consultation to be held on this issue. We intend to consult with charities, communities and stakeholders on this and the broader issues arising from gaming initiatives from the May 7 budget before any final decisions are made.

On a final but very positive note, Bill 75 includes an amendment that will give relief to communities that have been plagued by problem licensed establishments. This amendment to the Liquor Licence Act will limit further applications for liquor sales licences for up to a two-year period at premises where ongoing infractions or illegal activities have been chronic problems. I want to emphasize that this community interest based amendment to the Liquor Licence Act is intended to place more responsibility on property owners when leasing their property for use as licensed establishments, and takes into consideration the legitimate concerns of community groups and residents when ongoing problems occur.

This is welcome news to communities like Parkdale in Toronto that have been plagued by problem establishments that have showed little respect or concern for how the ongoing illegal activities they have harboured have impacted on the community at large. It will no longer be acceptable for the absentee landlords to duck all responsibility for the tenants they choose to enter into rental and leasing agreements with. However, if the landlord is sincerely unaware or has attempted to rectify the situation in their property, they will have the avenue of a hearing before the board before action is taken.

In summary, against the background of the commitments made in the May 7 budget of providing a significant economic stimulus to the hospitality industry and providing secure funding for community charities, the Ontario government is proceeding in a cautious and careful manner to implement video lotteries in Ontario under our tight regulatory control within a limited access

environment. Our initiatives will provide an increasing flow of funds to community charities across the province and assist the horse racing industry and the province's hospitality industry to compete and grow.

At the same time, the setting up of the new Alcohol and Gaming Commission of Ontario, along with amendments to the Liquor Licence Act and the Ontario Lottery Corporation Act, will provide a more focused and efficient approach to the enforcement of our beverage alcohol and gaming laws.

Ontario is the ninth province to allow the operation of video lotteries and we have put great effort into learning from the experiences of the eight other provinces that have gone before us. Two weeks ago when I was visiting Dr Steven West, my counterpart in Alberta's provincial government, his comments served to affirm that the cautious and controlled approach that we have chosen is indeed the right course. From the very outset, we stated that Ontario will have fewer video lotteries on a per population basis than any other province. I am encouraged that even the professionals that deal with the very worst downside of gambling, the counsellors that help those who are compulsive gamblers in Ontario, have lauded this government's cautious approach to legalizing and controlling this form of gaming.

Finally, Bill 75 provides for a housekeeping amendment to the Ontario Casino Corporation Act that enables the payment of some of the moneys received from Casino Rama to be paid directly into the first nations fund instead of through the consolidated revenue fund.

I am very pleased that these public hearings provide the people of Ontario with an opportunity to make comments on this important legislation. I look forward, as do all members of our government, to hearing the comments and suggestions that will emerge over the next three weeks both from the general public and from members of this committee. Thank you very much, Mr Chairman.

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The Chair: Thank you very much, Mr Sterling. We now move to the loyal opposition.

Mr Crozier: Thank you, Mr Chair, Mr Minister, committee members and ladies and gentlemen. Today is the beginning of a watershed for gaming in the province of Ontario. Bill 75, if you will, is an omnibus gaming bill. Through the use of a few clauses, it has the power to exponentially increase the government of Ontario's dependence on gambling revenue.

Make no mistake, ladies and gentlemen, Bill 75, despite its brevity, is a reckless, fly-by-the-seat-of-your-pants document. It opens the door to a form of gambling that other jurisdictions have dared to adopt and some not at all. Yet, as we sit here today, this government has taken little heed of these warnings.

The government's motive is greed, plain and simple, the need for money. You won't hear the Minister of Consumer and Commercial Relations say that, nor will the Minister of Finance say that, although we know that finance officials are already counting the money. However, Ab Campion, director of communications for the Ministry of Consumer and Commercial Relations, conceded, "I don't think anybody would deny that revenue

had a lot to do with it." He went on to admit, "Everybody's trying to do it as quickly as possible," under orders from on high.

What you will hear the minister say is that there is a burning need to control the legions of illegal slot machines in the province. Of course, the OPP is strangely silent or at least careful in their words on this issue, because they're not fools. Sergeant Larry Moodie of the OPP's illegal gambling division said that just because the government legalizes video gambling doesn't mean the illegal machines will disappear. "There's too much profit in it. It will take substantial enforcement to do that."

You will also hear what I will call the government's witnesses drone on about the need to give their business or industry a boost; about how we can attract tourists with these machines. The truth is, if your business is a restaurant or bar, you should be selling food and drink to the best of your competitive abilities. If video slot machines are to be the saviour, then that says a lot more about the problems within the food and hospitality industry than we may know. We have learned that licensed establishments in Alberta, the minister's favourite province, have become more dependent on video slots, and patrons have shifted spending from food and booze to the machines. The answers to the hospitality industry's problems lie more in consumer confidence than they do in draw poker.

You see, on the surface Bill 75 appears to be an exercise in modernization, in streamlining and control. We've already heard these words from the minister. But what Bill 75 really does is attempt to extract taxes on a voluntary basis. The government will be, in effect, bribing the province's charitable groups, the hospitality industry and the raceways along the way so that they will be able to mitigate their social concerns by getting a piece of the action.

It's clear that part of Bill 75 has a social-moral component. Having said that, I would also suggest that much of Bill 75 is workable. We have no interest in attempting to legislate morality, but we do strongly feel that something needs to be done in the area of gaming policy for the province of Ontario. Bill 75 does not do that. It completely ignores the fact that what has happened in gaming over the last three governments has been *ad hoc*.

Unfortunately for this committee, what could be a forum for hearing what the public thinks about issues such as the proper role of charity casinos and the desirability of video slot machines will not happen. The government has already made a value judgement about their existence. You heard the minister's comments today. It speaks in the affirmative: We are going to do this, we will do this. It's a foregone conclusion. This of course despite the promise of consultation on the issue before legislative action.

In fact, I challenge the government members here today that if you're truly going to listen to the witnesses I expect will appear before us in the next three weeks, that when it comes down to the clause-by-clause, I will be interested to see if it's much the same as the public hearings on Bill 26, and that was that not one clause from the opposition, not one amendment, was adopted. I would

find it strange that throughout three weeks of hearings, of listening to the public, there isn't something in this bill that should be amended. We'll wait to see if that happens. Instead, we have a committee of the Legislature soliciting views on a bill that is likely to be pushed through the Legislature early in the fall so that the first video slot machines will appear in or around October or November.

In fact, we know that the ministry is already preparing requests for proposals for the equipment. Later this month they will be inviting companies to bid on the permanent charity sites. So one question we might ask is, are we consulting on the merits of Bill 75 or just the technicalities? Therefore, we have some concern regarding the legitimacy of what is about to take place over the next three weeks.

I'd like to speak for a few minutes about trends. First, what we know is this: Video slot machines are in eight other provinces as well as some US states. But what can we learn from them? We can learn that at the very least we must tread carefully. The Premier, it seemed, used to be of this view. In a letter from Mr Harris to Charities First Ontario on May 16, 1995, the now Premier said, "A Harris government will not move on VLTs until all sectors have been consulted, all impacts are assessed and an agreement is reached on the distribution of revenues."

We have heard the minister say today that there will be an implementation plan later this fall. So this committee won't even be given the opportunity, nor will the public be given the opportunity, to comment on the implementation plan. The minister has already told us they're coming, there's little doubt about that in his words. But the Premier's promise that the government would not move until all sectors had been consulted, all impacts assessed and agreements reached — it seems to me, ladies and gentlemen, committee members, that the government is moving with great speed, notwithstanding that promise, and I want to emphasize, "until all sectors have been consulted, all impacts assessed and an agreement is reached on the distribution of revenues."

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We know that most evidence to date is either negative or incomplete. We must ask then, why Bill 75? This bill not only opens the door for the introduction of video slot machines to the gaming sector but creates a dangerous merger between the gaming and liquor commissions. I say dangerous because there will exist an easy licensing mechanism for video slot machines in licensed establishments. It's one simple amending sentence away from reality.

Efficiency arguments aside, this merger has far more implications than many of us can imagine.

First, we know that there aren't enough inspectors to uphold the existing liquor laws in our licensed establishments. This says nothing of the illegal ones operating in the province.

Second, how this supercommission, with its limited resources, is also to patrol 20,000-plus video slot machines is beyond comprehension. The short answer is, they can't do it.

Which brings me to another of the minister's justifications of Bill 75 and the legalization of these slot

machines: the ability to control the grey market. I don't think I should even have to explain why this reasoning is so abjectly ridiculous.

First, if we take the minister's argument to its logical conclusion, it would result in the legalization of all formerly prohibited actions and vices. What we end up with then is anarchy. While I don't want to engage in too much hyperbole, I will say that, at the very least, the minister is on a slippery slope.

Let's look at cigarette vending machines, a proposal I believe the Tories supported. We took them out of licensed establishments because the sale of tobacco couldn't be adequately monitored and controlled. And now we're to believe that a bar full of video slot machines will be better monitored? I disagree.

Let me reiterate a few key points before concluding.

The trend is towards limiting these machines. Addiction studies have borne out the problems. Charities have questioned them versus other forms of gaming revenue.

Control: We want to control this type of gaming where it exists illegally. We should be enforcing the law, not watering down laws.

Choice: We understand it is a muddy issue for some. Many can control their use of gambling, and yet studies have shown that this form of gambling is particularly addictive, especially for the young and the less well-off. We all have heard that oft-used phrase that it's the crack cocaine of gambling.

Therefore, we need to choose whether we should pursue this type of gaming at all. Second, we should ensure that communities across this province have the right to choose whether to allow this form of gambling on every street corner. Over 20 municipalities have already passed resolutions opposing the introduction of video slot machines, and I suspect that more will come as this issue becomes more public. So let's keep in mind that we're affecting the nature of communities if and when Bill 75 becomes law.

Finally, this is an issue that raises a larger trend that I mentioned at the outset: the ability of the government to function without these gambling revenues. Having our health care and education funding levels dependent upon people gambling is an alarming prospect, yet we are headed down that road. I've come to the conclusion that the most addicted to gambling to date is the provincial government itself.

We have the opportunity to pause for thought, members of this committee. Very little planning has gone into gaming policy over the past 20 years. Ad hockey has been the norm. As new games are developed, they are just simply introduced, be it Scratch and Win, Pro Line, 6/49. We've continuously increased the slices from it.

However, like all good things, it must come to an end. The gaming pot is not bottomless. Even if we assume that government-sanctioned gambling is a good thing, likely we would all agree that government must control what is otherwise so tempting to abuse. We must ask, to what degree should gaming take place? We must also be asking tough questions like: Who should decide? Is it a local issue or a provincial one? That is one question that needs to be asked as we travel across the province to the

communities that will feel the effects first hand and will be called upon to deal with the fallout from Bill 75.

As Eric Dowd wrote: "Premier Mike Harris has this strict principle on gambling — he is against it unless it can make his government a lot of money."

Members of the committee, we have an opportunity, and in fact we have a responsibility, to look at this issue in more than just economic terms. We must look beyond solving the short-term cash crunch caused by tax cuts and large deficits. We must resist the easy way out. Above all, we must listen not only to those with vested interests but to those who will live with the consequences of the legislation should it pass as it stands today.

The Chair: There are five minutes left of the 20 minutes.

Mr Gerard Kennedy (York South): What we'd like to add is simply how the experience in other jurisdictions underlines the recklessness this present approach embodies. In British Columbia, video lottery terminals were turned down by that government. In Alberta, the oft-cited Alberta, that government has capped the number of these slot machines because of concerns arising in local communities. Studies there are showing more and more that the public is against the impact these are having. In Manitoba, they've withdrawn 10% of these machines, with plans to withdraw more. In Nova Scotia three years ago, they withdrew two thirds of these machines because of the deleterious effect they're having on neighbourhoods.

What this government has not done, as my colleague has already pointed out, is allowed us to address this issue in its most straightforward proportions. Later on, we'll ask the minister: "Tell us how much money you are planning to extract from this. To what kind of cost are you putting this province in order to raise that money? Have these studies been done?"

But ahead of that, people need to realize that they need to be part of this discussion, because the government has the audacity to put charities at the front of this bill as if somehow this is mainly about them and not about where 90%, or a huge percentage, of this revenue is going, which is to government coffers because this government's fiscal plan is so far off. We're going to take a huge step — and we hope this government and this minister indeed will tell us how big a step — in expanding gambling in this province for that simple reason: because this government can't add. We're going to take on the experience of US and Canadian jurisdictions where the crack cocaine of gambling, the slot machines, will be in every neighbourhood, exposing, really, this province to what should be seen as a symbol for this government, which is a machine that employs nobody, produces nothing and preys on vulnerable people.

I think when we are coming to terms with this as a committee, we have to look square in the face of the impact it's going to have in those communities and listen very, very closely to the 23 communities already, in anticipation, that have said they don't want this happening in their area. We look forward to the minister's comments further.

The Chair: Thank you very much, Mr Kennedy. If we could proceed, Mr Kormos.

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Mr Peter Kormos (Welland-Thorold): I'm not inclined to understatement, but with some great understatement I can tell you that neither I nor the other members of my caucus are very enthusiastic about this proposal. It would as well be an understatement to describe this as modest, because it indeed is overwhelming in its impact on communities and families and individuals across this province.

It's all about bucks; the bottom line is that this all about bucks. This is coming from a government whose leader, the Premier, said, "We don't have a revenue problem; we have a spending problem." Let me take issue a little bit with some of the other things that some of the leaders of this government, the Tories, have had to say.

Why, it was back in 1993 that Premier Harris acknowledged — he said it here in the Legislature — "As Donald Trump says, 'Gaming doesn't come cheap.' I have to agree with a lot" of the things the critics are saying on that. Gambling "brings crime, it brings prostitution, it brings a lot of the things that maybe areas didn't have before. There is a big cost to pay." Mike Harris said that in 1993.

A little while before that, some six months, in 1992, again in the Legislature, Mike Harris was commenting on the last government's proposal to establish casino gambling here in the province of Ontario. I've got to acknowledge that I was more inclined to agree with Mike Harris then because I opposed that legislation, I voted against it, because I had great concerns about the effect of casino gambling — still do — and great doubts — I remain cynical — about the effect of casino gambling to provide positive economic impact on communities.

I think the jury is still out very much in that regard. Witness what the Ontario Restaurant Association had in its comments, in its assessment of the Windsor casino on prosperity for small businesses in the downtown Windsor area. Of course, now we have Orillia. Niagara Falls — the construction crews are there ripping down walls and ready to accommodate any number of gamblers who will come to Niagara Falls.

Let's understand: Gambling is all about losing money; it's not about winning money. It's all about people having their pockets picked, about people being turned upside down and having every last nickel and dime shaken out of them. It's not about winning; it's about losing. What's repugnant about the proposal and the issues we'll be dealing with during the course of the next three weeks and what we've witnessed coming out of Orillia over the last few days are carefully sculpted, crafted press releases talking about the winners. Their names and smiling faces have appeared in newspapers across the province. But the reality is that there were far more losers. Gambling isn't about winning; it's about losing.

Mike Harris knew that at one point in his political career because back in 1992, when he was questioning the approach of the last government to developing casino gambling, he said: "Wouldn't it make more sense from a sound management point of view, something we haven't seen very much of, to do the social projections and economic studies before you announce the casino?"

Second, in the absence of having done that, when can we expect to see the economic and social projections and results of those impact studies, even though you've already made the announcement?"

The cynicism with which this government and the minister try to market this less-than-modest proposal — I mean, "VLTs," what a sanitized, somewhat neutral way of talking about slot machines, one-armed bandits. They were slot machines, one-armed bandits when the south Chicago mob was running them in Illinois in the 1920s; they were slot machines, one-armed bandits when the mob was developing them in Las Vegas through the 1950s into the 1960s to the present; and they're slot machines and one-armed bandits here and now in the province of Ontario when this Conservative government is trying to put 20,000 of them in every place but casinos — in every community, in every neighbourhood, in every single part of this province.

The finance minister said back in March of this year, "VLTs could create a lot of social problems in society.... Lots of other provinces have introduced VLTs" — slot machines, please, one-armed bandits — "and lots of other provinces have had social problems as a result of VLTs" — slot machines, one-armed bandits.

Mike Harris, who wanted to speak oh so strongly back in 1992 and 1993 with concern for casino gambling, who expressed great caveats and concern about the impact on our communities and families and individuals, now becomes the godfather of gambling in Ontario. That goes beyond mere cynicism. It's the ultimate in hypocrisy and, quite frankly, there's something very dishonest about it — extremely dishonest.

We're talking about big bucks, but big bucks that are going to be extracted from the pockets of little people least capable, least able to pay. Again, part of the packaging here. I realize that some people spend — and please, Mr Sterling, tell your staff they've done a good job; they've done well. The proposal of 2% of gross revenues being provided to finance programs to deal with addictive gamblers, is that anything to be proud of? That's like rationalizing the legalization of heroin so that you can take 5% of the gross proceeds, of the revenues of heroin, smack, junk dealers, to fund drug treatment programs for sad, pathetic junkies and drug addicts. There's nothing proud about saying that 2% of gross revenues is going to be allocated to funding for gambling addictions when you're introducing the most addictive form of gambling and when you're introducing the very type of gambling most accessible, requiring the least amount of skill on the part of the player. We're not talking here about a card game where, if one's playing the game, one has to exercise some thought process in applying the rules and the logic. We're talking about a pure, 100% game of chance that just rattles on and on in machine-gun fire.

The government hasn't even done — I shouldn't suggest that you haven't. But indeed if you have looked at some of the research about the addictiveness of slots and one-armed bandits, and the manner in which they draw young people into the devastating world of addictive gambling and the manner in which they draw previous non-gamblers into the devastating world of addictive gambling, if you have read it, then the proposal

you're making today before this committee is even more repugnant.

Take a look at the 1990 publication *Journal of Gambling Studies* out of Britain. "Gambling activity most likely to lead to pathological gambling behaviour in adolescents is the playing of coin-in-the-slot machines." This is the activity that draws young people, and when one takes a look at gamblers across the board and where the problems come from in people of all ages, this is the type of gambling activity that draws these people into addictive gambling.

The Manitoba Lottery Policy Review Working Group report of December 1995 indicated that, "A large majority of Addictions Foundation of Manitoba problem gambling clients and Help Line callers report..." slots, slot machines "to be their primary form of gambling." This is where the addict goes. Similarly, the same working group report indicated that: "There is a striking correlation between age and" slot machine "usage. A significant majority of 18- to 24-year-olds (66%) have played" slots "within the past year. The frequency with which Manitobans play" slots "decreases with age."

The government at the same time, in some of its reviews, indeed relies upon the Brandon University study done by Professor Gfeller, *A Profile of VLT Gamblers in Brandon, Manitoba*. But the government doesn't relate all of what's contained in that report. The fact is that there are going to be some people in Ontario who are never going to gamble, who are never going to be lured by the foolishness of a thought that you can get something for nothing, who are never going to be lured by the essential con job that the slot machine provides, and that is that you have a chance in hell of winning. You haven't got a snowball's chance in hell of winning. That's the reality of it.

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The Gfeller study in Brandon indicates several things that are noteworthy that the government chooses to ignore when it quotes Gfeller. It says that slots "players indicated that their expenditures on gambling had increased since VLTs became available and they spend more money on VLTs than other forms of gambling. As apparent elsewhere, the introduction of" slots "has led to an increase in overall gambling activities and expenditures for these persons."

Once again the Gfeller study from Brandon University: "As shown elsewhere, more people gamble when opportunities to gamble are more readily available." There's nothing profound about that; people have been telling that about any number of addictive behaviours for a long time. "Thus, the accessibility" of slots "places more people at risk for gambling addiction and for some this will include involvement in criminal behaviour."

We've got a government here that is callously, cynically, uncaringly, and motivated by — let's get down to the nitty-gritty. The fact is that this government was less than candid when the Premier said, "We don't have a revenue problem; we have a spending problem." The fact is that this government has created a revenue problem, because they sure as hell do have one now, because they've got to fund a massive tax break for the wealthiest in this province. This government is prepared to sacrifice young

people, working people, the unemployed, those people who are lured into gambling at the prospect of grabbing the brass ring. It's prepared to sacrifice them to finance a tax break for the very richest in this province, "and for some, this will include involvement in criminal behaviour."

This is a government that wants to talk about law and order, that wants to talk about security in the community and safety for families in their homes, yet it's nurturing and promoting behaviour that's going to create higher rates of crime and contradict what we've seen in some recent trends.

Gfeller again says this: "The current increases in legalized gambling present the challenge of how to conceptualize problem gambling as a mental health concern. This focus had important implications for the development of new and innovative approaches to the intervention and prevention of gambling problems."

Let's listen to Dr Howard Schaffer of Harvard Medical School, who is an expert on gambling. He was addressing the proposition, and there was something rather silly, quite frankly, about it, that the government was getting involved in slot machines, putting 20,000 slots in every place but casinos across the province of Ontario to counteract and to attempt to address the issue of illegal slots. The two are totally separate issues. The fact is that the Ontario Provincial Police anti-racket squad has already told this government that if you want to end illegal slots and other illegal gaming activity, give the OPP the resources to investigate them and deal with them.

There are just too many bucks involved here. The reality is, and these same sources are going to indicate and have indicated, and this government knows it, that with the introduction of government-regulated slots — owned, mind you, by the private sector — there's going to be big money made here, but at great expense, at great cost to the most vulnerable people in our community, in our society.

This is what Dr Schaffer has to say about the argument that the legalization of slots would attract those who now gamble illegally. Dr Schaffer, an expert, Harvard University, says that not only would there be a substantial increase in gambling, but many would probably turn to illegal gambling eventually because the payoffs in illegal slots are always higher.

The minister and his staff and the Premier knew that. Every one of the references I have made are concepts that are familiar to this government. Notwithstanding that, they've gone ahead with this insane proposition of putting 20,000 slot machines in public places in every city and every neighbourhood in this province to lure those who are most desperate, again, for a crack at the brass ring. I tell you there's a logical correlation between the despair of unemployment and poverty which has persisted in the year-plus since this government's election, its failure to even begin to fulfil its promise to create the jobs that people relied upon when, I'll acknowledge, they elected the Tories; some say Reformer Tories because the fact is that they're Reformers more than any Tories anybody ever knew in this province. When people elected them they relied upon their promise to create jobs.

Slots ain't going to create jobs for the unemployed in the Niagara Peninsula or in northern Ontario or for young people. Slots are going to create a whole lot of wealth for the private owners of these slot machines; they're going to create a lot of wealth for a government that has become revenue-starved because it's made a commitment it intends to fulfil: to pad and line the pockets of the richest in this province at the expense of the unemployed, the poorest and poor working people.

I questioned the finance minister in the Legislature on this attempt by the government to somehow suggest that their proposal for 20,000 slot machines in every neighbourhood in this province — that's the goal. It's part of the spin. People in the minister's office get paid a lot of money, and from time to time outside consultants are hired — nothing's changed — to try to put spin on otherwise unpleasant propositions. A lot of people are paid really well to look to other things, to tell the ministry, "Call them VLTs"; somehow this makes it something more akin to a Pacman machine than to slots.

Talk about the 2% commitment to programs for treating addictive gamblers; oh yes, get the data from the OPP about the extent of illegal slots here in Ontario and make the bold but totally dishonest assertion that the 20,000 slots of Mike Harris, the Godfather of gambling in Ontario, somehow are going to eliminate those illegal machines. Dr Schaffer from Harvard says that just isn't the case, the OPP has said it just isn't the case, the finance minister, Mr Eves, has already indicated that it isn't the case, so whom are we to believe, Mr Sterling or Mr Eves? The two contradict each other. One can't be telling the truth.

Mr Eves, in response to a question that I put to him in the Legislature in May earlier this year — he did say that the member, and he was referring to me, was quite right; I appreciated that. I suspect that Mr Eves may be more dead-on with this reference than Mr Sterling has been, but Mr Eves said there definitely will have to be a larger force to enforce video lottery terminal gaming of all types in the province.

There has been no indication to date, from the point in time when Mr Sterling and the government acknowledged the high level of illegal gambling and acknowledged that it was going to require extra police resources, of a single new police officer, of a single hour of policing time being allocated to the anti-racket squad of the OPP. I'm looking forward to asking Mr Sterling to make a commitment on record about allocating resources to the Ontario Provincial Police and other police forces that are going to be called upon to attack illegal slots and other illegal gambling.

Of course Mr Sterling — again the spin doctors, these little people, are writing away on their computer terminal keyboards a mile a minute — talks about how this is going to sustain, in fact amplify, the hospitality industry. Once again I say horsefeathers. Please don't try that stuff on people in Ontario who know far better. Slot machines are going to suck money out of the pockets of people who are least able to afford the activity. Mr Sterling's and Mike Harris's proposal is going to make those slot machines available on every street corner in every city, town and village in this province. You see once again the spin: You try to turn it into, "Oh, it's entertainment."

I've talked to a lot of people, and I guess one person's version of entertainment isn't another's. The same could be said of any number of other types of addictive behaviour, but the bottom line is that they're extremely dangerous forms of activity which have a huge cost, which take a huge toll on communities, families and individuals.

1400

I wish I had more time, Chair, as you can well imagine. I want to speak to the attack on the workers of the Liquor Licence Board of Ontario and on the public sector workers, OPSEU members, of the current Gaming Control Commission. This so-called schedule 1 agency is nothing but a back door ruse to privatize the regulation of two very important activities here in the province of Ontario and to conduct, again, the most insidious attack on organized labour.

Mr Sterling has persisted in talking about the levels of consultation he's had with leadership from these two union groups, OLBEU and OPSEU. I tell you, once again it's a matter of not being able to believe both, because somebody ain't telling the truth. Because OLBEU and OPSEU again persist in indicating that, oh yes, they were told about it: A memorandum was laid on the table and Norm Sterling, the minister, walked away and said, "It's my way or the highway." That's the level of consultation.

We're embarking on a very dangerous course. We're looking at some pretty serious stuff here. We're looking at people's lives that are going to be destroyed by the government that simply doesn't give a tinker's dam. I'm not looking forward to the next three weeks but, by God, I'll be here.

The Chair: Thank you very much, Mr Kormos. All members of the committee should have received the remarks of Minister Sterling. If you haven't, speak to the clerk.

We now proceed to questions. Each caucus will have 15 minutes in questions, as a bloc. The committee would welcome Deputy Minister Lal, and I understand that also seated at the table with the minister are Teri Kirk, director of legal services branch, and Mr Rob Harper, senior policy adviser. Could we then proceed with the opposition?

Mr Kennedy: Mr Minister, I wonder if you could relate to us, as I alluded to in my earlier remarks, the dimensions of the rollout of video slot machines that are being planned for the province. In other words, what number, what amount of revenue or at least what range of revenue, are you looking forward to as a consequence of this bill?

Hon Mr Sterling: First of all, I'd like to get a popular notion which the opposition is trying to portray in this committee put forward, that there is something in this legislation talking about slot machines. There's nothing in this legislation that talks about slot machines. If they would refer to section 6 of the bill, they will find clearly that these are not slot machines. They are very different from video lottery machines. No other province has gone through this process and allowed slot machines in their jurisdictions, and there's no intention of Ontario to allow slot machines to be anywhere other than in a commercial casino, as we have now two in our province, one being at Rama and one being in Windsor. There are very

significant differences in making that distinction put forward to you because there are people within the industry who would point out that there are very, very different draws to the different kinds of machines.

I believe the expectations of the province with regard to revenue were put forward by the Minister of Finance some time before at about \$185 million out of these initiatives. I don't know what time frame he was talking about when he put forward that, whether that was the 1996-97 fiscal year or whether he was talking about a full year at that particular time. We've also said that we expect charities to benefit to the tune of \$180 million in total out of the measures put forward in the May 7 budget.

Mr Kennedy: Minister, I wonder if we could rely perhaps on some of your staff here to tell us a little bit more clearly: What is a full year of these slot machines going to realize? When we look at 20,000 slot machines, when we look at the experience of other provinces, we look at a potential government revenue in the order of \$400 million. When you talk about 2% going for gambling initiatives, that talks about at least \$450 million. When the minister in the House, in his budget statement, talked about 10% going to charity and that being \$100 million, it infers \$1 billion. I'm just wondering if we could get this in a full-year, fully realized form, and if you could also include the number of machines which this government is planning to put out there among the various communities.

Hon Mr Sterling: I think we've talked about 20,000 machines and we've talked about having a number of machines less than any other jurisdiction of the eight other provinces that have them, on a population basis. The truth of the matter is that when you go into these particular predictions, you're not exactly sure of the final revenue picture until you get the plan on the floor or until the machines start operating. This has been proven with regard to the predictions on the Windsor casino under the last government. There were predictions that were exceeded in that particular case.

When you do the market studies with regard to these kinds of things, you can't really know what happens until you're fully implemented in terms of the outcome on the revenue side. We are confident that we can hit the \$180 million for the charitable group in a full year of operation, when they're fully operating.

Mr Kennedy: A couple of figures for the minister. You may wish to know that there are less than 4,000 slot machines in Quebec and therefore you won't be able to meet the ratio of population to machines there by the figures that we have, and further, that —

Hon Mr Sterling: I believe they're going to 15,000.

Mr Kennedy: In terms of what exists now, Minister, I believe that's the case. Also, in terms of the charitable revenue, there are estimates from the charities that they're raising over \$200 million now and they're worried about the adverse effect.

I really would like to ask you to address, if you wish, that figure, but also this question in terms of whether this government has at any level consulted with the Metropolitan Toronto Police Force, the Association of Police Chiefs, the Ontario Provincial Police or any police forces

in Ontario about their feedback on VLTs. When our office spoke with Paul Gottschalk, the staff inspector at special investigations, which includes the morality squad, at Metro Toronto, he said VLTs are a nightmare. He said we could quote him and use his name, that crime is expected to rise significantly based on evidence in other jurisdictions. I'm wondering if your ministry is in possession of that kind of input or similar studies about the impact in terms of crime and what kind of result there has been so far from those discussions if they've taken place.

Hon Mr Sterling: I personally have not had discussions, but the Gaming Control Commission, which is part of the new Alcohol and Gaming Commission, is in constant touch with the OPP, with all of the police forces in the province of Ontario. They know what each other is doing about it. In fact, the gaming commission is largely staffed by former OPP officers in terms of their operation in Windsor and in terms of a lot of their people who are involved at Rama. I suspect they would be involved as well with regard to this. There's a very, very close tie between the Gaming Control Commission and the police forces in this province.

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Mr Kennedy: Minister, my question is, do they have an opinion about whether your introduction of VLTs, of what every other jurisdiction calls electronic slot machines, is going to increase the incidence of crime? With some of the concerns we've heard from police forces, have you heard those concerns, has this government sought out those opinions, and what do you say about those opinions? Am I to understand, just for the sake of clarity, that you have not got those opinions?

Hon Mr Sterling: Mr Kennedy, you persist in saying that every other jurisdiction calls them electronic slot machines. That is not true, so I wish you would quit putting forward that particular part of it. You know, we talk about spin doctors here. I guess you don't need spin doctors. But notwithstanding that —

Mr Crozier: Don't have to pay them.

Hon Mr Sterling: Anyway, I won't get into that particular part. At any rate, the gaming commission is quite aware of the risks associated with this because it's in constant contact with the other jurisdiction and the gaming commission believes that we can introduce these in a regulated fashion; we can do it in a more controlled fashion than any other jurisdiction in North America has done.

Mr Kennedy: But, Minister, can we do it without increasing crime?

Hon Mr Sterling: Yes, I believe we can.

Mr Kennedy: And on what basis do you form that opinion, is what I'm asking today.

Hon Mr Sterling: I was out in Alberta two weeks ago and I was talking to the Alberta lottery commission, which has a strict control over the video lottery machines they have in that province. I indicated in my opening statement that each machine will be monitored, not only from within, but from without so that the control over these machines is very, very substantial.

The other part of this bill which is very important is the ending of the Monte Carlo nights. There are 9,000 of

these that are occurring over this province and are very difficult to monitor and regulate and ensure that people are acting in a fair and reasonable manner with the players. The whole idea of going to permanent charity halls was to get away from the difficulty in regulating that particular gaming activity.

Mr Kennedy: A final question: I'm wondering what your reaction is initially to the large number, the 23 municipalities, that have already said they do not want to have these machines in their towns. This government at one time talked about casinos, and "charity gaming halls" are the nice — talk about spin doctoring. That's as nice a touch as it gets when we talk about what really are mini casinos: 50 gaming tables, 200 electronic slot machines, VLTs. To be courteous, what will your ministry do and what will this government do in terms of what that sets up in municipalities — pitting them against each other. Will there be due regard for those requests and how will they be incorporated in terms of how you look at the framework of the legislation you're putting forward here today?

Hon Mr Sterling: I am, of course, interested in hearing what any municipality has to say about any issue. I believe some of them will take a very different view once they see how this is rolled out and how the implementation plan takes place. I understand that there are citizens within all our communities who are against gaming in any form and there are some who are against this particular form of gaming. They've had their voices and they've put forward their particular views at this time. That's what we're going through in this hearing as to how this should be controlled and we're interested in listening to people, what they have to say, to come out of them.

I would add, though, that your numbers with regard to the charity gaming halls are way out of whack.

Mr Kennedy: Which numbers are they, Minister?

Hon Mr Sterling: I think you said "200 gaming tables" at —

Mr Kennedy: So 50 gaming tables, 200 VLTs — are those not the correct numbers for the charity gaming halls?

Hon Mr Sterling: I'm sorry. I think you're still high on the VLTs.

Mr Kennedy: Could perhaps some of your staff clarify that?

Hon Mr Sterling: Yes, they will be able to during the technical briefing.

Mr Kennedy: Those are the numbers we were provided, and that's a substantial, significant mini casino, in our estimation.

Hon Mr Sterling: It's my understanding the numbers are lower than that.

The Chair: Thank you, Mr Kennedy. Mr Crozier, you have four minutes.

Mr Crozier: Minister, can you provide us with some information as to the effect that the video lottery terminals will have on charitable gaming?

Hon Mr Sterling: I think they will have some effect on some of the other gaming activities in this province. Presently there is \$10 billion a year gambled in this province. As one introduces another form of gaming, it

normally affects the other forms of gaming. It depends how close the location of the alternative form of gaming is to the other one that it might affect, but notwithstanding that, there will be a significant increase in terms of the outcome for charities in Ontario with the introduction of these machines.

Mr Crozier: That didn't exactly answer my question. I think I asked if you could provide some data. It might surprise you to know — I'm looking at some information that was prepared by legislative research — that there are no hard data on what impacts VLTs may have on charitable gaming in Ontario. In fact, the CFO, Charities First Ontario, says, "There is a staggering lack of information available to guide the examination of VLTs." So I take your words for what they are, but I'm concerned that they're not backed up by anything substantial.

You've made quite a point, Minister, that these are not slot machines, and by definition you may be right, but frankly I think they're worse than slot machines. At least with slot machines you have to take time to drop money in them. At least that's my understanding; I've only been in one gambling casino in my life, but I understand you have to take time to drop money in a slot machine. You sure don't with these. Just as fast as you can pound the keys, it'll build up your credits and take away your money as quickly as can be done. So in that respect, sir, I suggest they're more hideous than slot machines, but we'll all use our own definition.

I wonder if you might make a comparison for me, for example, with break-open tickets, which you're no doubt familiar with. In charities in Ontario this past year: profits to charities in Ontario, \$197 million; prizes paid out to customers, \$961 million. So the prize payout is about 73%; profits to charities are 15%. How does that compare to video slot machines and the way the province of Ontario is going to share with charities and winners and take away from losers? How do those statistics compare?

Hon Mr Sterling: I think the gross figure you have — I'd have to ask the gaming commission, but I believe it's somewhat less than \$190 million that charities get out of break-open tickets. I think it's around \$110 million or \$111 million. But notwithstanding that —

Mr Crozier: I'm provided with information that says \$197 million, but we won't argue about a million here or there.

Hon Mr Sterling: You may have to take out the cost of the operation.

Mr Crozier: My point is, with break-open tickets the manufacturers get 4%, the retailers get 5%, the licensing cities, towns, get 2%, the charities get 15% and the prizes paid to customers get 73%. You'll notice there's nothing in there for the government. Wouldn't you say then that the distribution of those break-open tickets is fairer to those who are involved than a government that's going to come in and take what percentage of video lottery terminals?

Hon Mr Sterling: First of all, in a video lottery terminal the customer gets a lot more than 73% back; they get somewhere between 85% and 96% back. So the customer is far better off in terms of the payback they may or may not receive from playing —

Mr Crozier: Does that mean charities get less then?

Hon Mr Sterling: No, it doesn't mean that, because it depends on — you have to talk about the gross figures that you're involved in. You can't half talk about the percentage breakouts of the transaction that takes place and then talk about the gross figures at the same time. The bottom line of all this is that charities will be getting about \$80 million to \$90 million, I think was our original estimate, over and above the \$110 million they're receiving from break-open tickets on a full-year basis. Those were our estimates of the revenue coming out.

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Mr Kormos: Mr Sterling, when I was making my brief comments, I made reference to the University of Exeter, Professor Griffiths's article from the *Journal of Gambling Studies*, which concluded that the gambling activity most likely to lead to pathological gambling behaviour in adolescents is the playing of slot machines. Is that consistent with the information you've obtained over the course of your study of this matter?

Hon Mr Sterling: Pathological or addictive gamblers, in the studies I've read, run somewhere between 1% and 1.5% of the population. As I indicated before, we presently have \$10 billion of gaming going on in the province of Ontario. I don't know whether break-open tickets, horse racing, video lottery machines or going to the Windsor casino is more addictive than the other. When you have an addictive gambler, quite frankly, I guess it doesn't matter what form of gaming you're involved in. They have a serious problem and you've got to try to face that problem the best you can.

Mr Kormos: In the *Edmonton Journal* in January 1996, in an article about slots in Alberta, a volunteer coordinator with Gamblers Anonymous was quoted. That person said:

"I'd say about 90% are calling to Gamblers Anonymous because of trouble with video lottery terminals" — slot machines. "They're the crack cocaine of gambling. They take people down very quickly and they're more addictive than anything else."

Again, is that consistent with the sort of research and information you've had access to during the course of preparing Bill 75?

Hon Mr Sterling: As I said before, one of the reasons we're putting the 2% aside for addictive gambling is to deal with these people, as well as to gain some very, very good research into areas like video lottery machines. The problem is that there hasn't been enough research done to deal with some of the addictive behaviours and the programs associated with them. All I can say, Mr Kormos, is that we are, as I said before, introducing these in the most evenhanded, tightly regulated package that we can imagine doing.

Mr Kormos: But do you understand why any number of sources speak of VLTs, as you want to call them, or slots, as the crack cocaine of gambling? Do you understand why they're referred to in that way?

Hon Mr Sterling: I don't know why they use that phrase, but I guess the reason is that the more frequently a game can be played the more attraction it has to this 1% to 1.5% of our population.

Mr Kormos: I appreciate, there it is, but you speak of gambling as entertainment or part of the entertainment industry.

Hon Mr Sterling: Very much so.

Mr Kormos: Have you ever played a slot machine?

Hon Mr Sterling: Yes, I've played a slot machine, sure.

Mr Kormos: From a very subjective viewpoint, do you find that at all entertaining?

Hon Mr Sterling: Not very.

Mr Garry J. Guzzo (Ottawa-Rideau): Ask him about the track. Go ahead.

Mr Kormos: Because I'm telling you, Mr Sterling, I'm having a difficult time. Quite frankly, Mr Guzzo, I understand how the sport of horse racing, combining elements of animal agility and skill and human skill, can be regarded as entertainment; I understand how a pool game could be entertaining, regarding a degree of skill and agility. I'm inclined to agree with you that I don't see anything about playing a slot machine that qualifies as entertainment. What sources do you have that permit you to identify it as entertainment when you yourself don't find it very entertaining?

Hon Mr Sterling: When I've travelled to the Windsor casino or when I've travelled to other jurisdictions where I've gone into a casino, I've seen thousands and thousands of people playing these machines and finding them a great source of entertainment. I'm not here to judge what people find as entertainment or not entertainment. As Mr Guzzo alludes to, I'd much rather go to the horse races, quite frankly. I find that entertainment, but some other people would not find that as such. I guess the proof is in the pudding. In the Windsor casino, when I was there, there were as many people playing the machines as there were playing the card games at the table. So who gets what entertainment from what is a personal choice.

Mr Kormos: Oh, I see. You talk about the entertainment industry and you talk about the hospitality industry. What type of impact — surely you've studied this — will introduction of slots in every community in this province — when we're talking about 20,000, that's what we're talking about — have on forms of bona fide, legitimate entertainment like movie theatres, amusement machine owners, bowling alleys, things like that, in view of the fact that you're counting on literally millions of dollars being taken out of people's pockets that they would otherwise be spending somewhere else and being pumped into the slots? Have you looked at the impact on other forms of community entertainment as a result of the introduction of slots?

Hon Mr Sterling: I don't think that anybody could predict what the outcome is with regard to introducing a new form of gaming to us with a great deal of accuracy as to where those consumer dollars would or would not go. There's no question that when you introduce a new activity into your society there's a chance that some other activity is going to suffer to some degree. That's the way it is. But as I said before, I suspect that some of the \$10 billion which is now in gaming will be diverted into this form of gaming in Ontario.

Mr Kormos: But surely you've got to understand that slots are the entry level for neophyte gamblers. You don't have to know how to read a racing form, you don't have to know the rules of the game of poker, you don't have

to know the basics of the game of 21, you don't have to know about the various odds schemes in a game of craps, even though that's an American phenomenon, not Canadian. Surely you understand that slots are the entry point, that you don't have to know nothing about the game, that there are no rules to understand, that you pop the coin in. Is that not a fair assessment of it?

Hon Mr Sterling: First of all, I thought the entry level was a lottery ticket, which we've all bought around the corner or at the local charity or whatever. God knows I've bought enough in the last 20 years that I've been in politics. That, I presume, is the entry level with regard to people involved in gaming. Whether this is the entry level to another level of gaming, I don't necessarily buy that.

Mr Kormos: How do you rationalize the observation by researchers — that's what the data indicate — that as people age their likelihood to play the slots diminishes; that it's basically the younger person, the neophyte, who's attracted to the slot, notwithstanding that I'm sure people of all ages play them? But the research shows that it's the neophyte, the beginner, the person who doesn't know a damn thing about the rules of gaming, who is attracted to the slots. How do you explain that observation?

Hon Mr Sterling: I think number one is that the young people play a lot of computer games, have been introduced to pinball machines in video parlours and that there's a natural progression to there. I guess some of the research shows as well that older people like to have slower games. Maybe that's why I like horse racing, where there's 20 minutes between each race.

Mr Kormos: You speak of the \$10 billion currently gambled here in Ontario. This proposition is looking not simply to relocate that \$10 billion but for new money, isn't it?

Hon Mr Sterling: I don't know whether this will be new money or what was previously gambled in other areas.

Mr Kormos: But surely your proposition isn't designed to attack or assault the horse race industry, is it?

Hon Mr Sterling: Absolutely not.

Mr Kormos: Your proposition, Bill 75, isn't designed to attack or diminish revenues for 6/49 tickets?

Hon Mr Sterling: With regard to the horse racing industry, if the horse racing industry chooses to have video machines at its tracks, it will reduce, in all likelihood, some of the betting on the races there. They will have to make that business decision as to whether they want them there or don't want them there in terms of what they're doing.

It will be another form of entertainment, so there will be some new gaming dollars probably in this area unless we have now reached the peak in terms of the gaming appetite of the people of Ontario at \$10 billion. No one really knows where that ceiling will be reached. As I understand it, in northern Europe they're on the down slope in terms of gaming activities in their countries, where they've had all sorts of gaming types for the last 25 or 30 years.

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Mr Kormos: Who is going to own these slot machines?

Hon Mr Sterling: That has not been determined.

Mr Kormos: What are the plans under consideration? You've had option A, B, C given to you. What are some of the considerations? Who's going to own the slots? The government is not going to own them. We know that, right?

Hon Mr Sterling: No, you don't know that.

Mr Kormos: So that's one of the considerations as well?

Hon Mr Sterling: That's right. The Ontario Lottery Corp may own these machines.

Mr Kormos: No private sector —

Hon Mr Sterling: The Ontario Lottery Corp will be in control of these machines under any circumstances. They have to be.

Mr Kormos: So on the table still is the possibility of no private sector involvement?

Hon Mr Sterling: That's a possibility, yes.

Mr Kormos: Do you support that proposition?

Hon Mr Sterling: The cabinet hasn't made a decision on that particular item, and I haven't had —

Mr Kormos: I know, but what do you support?

Hon Mr Sterling: I haven't had my chance to have input on that particular matter.

Mr Kormos: If they're not owned by the government, who is going to own them?

Hon Mr Sterling: I presume that they would have to go through some kind of tendering system which would buy them or buy the services of somebody outside the government.

Mr Kormos: Would you break the province up into regions and tender out regions for the provision of slots for respective regions?

Hon Mr Sterling: I have no idea with regard to that, but I wouldn't imagine that would be the case. There are different kinds of machines. There may be different suppliers of different machines or different people involved on whatever subsections you might draw up.

Mr Kormos: Is it conceivable that each tavern owner might be able to purchase their own machine?

Hon Mr Sterling: I don't think that's possible.

Mr Kormos: Why?

Hon Mr Sterling: I'm into areas where it probably would be best to ask the technical people later, from the Ministry of Economic Development and Trade, as to whether that's a possibility.

Mr Kormos: You're talking about 20,000 slot machines. What's a slot machine worth?

Hon Mr Sterling: From \$8,000 to \$10,000.

Mr Kormos: These are manufactured where?

Hon Mr Sterling: They're manufactured all over North America, I believe.

Mr Kormos: What are the Canadian manufacturing locations?

Hon Mr Sterling: I think there's a manufacturer in Quebec now. I don't think there are any manufactured in Ontario.

Mr Kormos: Who is going to collect the moneys from these machines?

Hon Mr Sterling: Again, if you want to ask these questions in the technical briefing, that's fine; those people could answer them as well as I. Basically what

happens under the systems is that it's all centrally controlled so that the central control can tell every quarter that's put into the machine and every quarter that's paid out of the machine or paid as a result of a credit to the machine, and there is an absolute tracking of those particular moneys which then flow to the Ontario Lottery Corp.

Mr Kormos: You see, I'm asking these questions because I'm concerned. I'm not aware of a slot machine jurisdiction over 10 years old, with more than 10 years' maturity, that hasn't become infiltrated by corruption, by in some cases various types of mobs, by a total lack of integrity in the system. I'm concerned about how you propose to maintain integrity in a system of slots, 20,000 across the province, if there is indeed private ownership, about how you intend to protect the integrity of that in view of the fact that the history is that every single jurisdiction with slots over 10 years of age has been infiltrated and totally infected by criminal activity.

Hon Mr Sterling: I don't know that. Notwithstanding that, the whole role of the Gaming Control Commission is to ensure that doesn't happen here.

Mr Kormos: What's the expertise you've obtained to give you advice on the things we've been talking about, the best mode of implementation of this system? What's the source of that?

Hon Mr Sterling: The gaming commission people. The Alberta government experience is that their machines are all owned and run by the Alberta Lottery Corp, and their gaming commission of course is very much involved in regulating the Alberta Lottery Corp as well.

Mr Kormos: Surely a decision has to be made at some point, and it's pretty difficult for this committee to be doing with Bill 75 without understanding how the government proposes to implement it. Can you commit yourself to this committee that this committee will have an opportunity to consider and review the proposal as to ownership and implementation once that decision has been reached? Surely it's an important enough consideration that this committee ought to have an opportunity to review it.

Hon Mr Sterling: You have the opportunity, I'm sure, in the Legislature to ask whatever questions you might want to with regard to the implementation of these proposals as decisions are made. Time is of the essence in terms of making some of these decisions, and we will carry on as any other normal government does when they're doing this.

The Chair: We now move to the Conservative caucus.

Mr Tim Hudak (Niagara South): Minister, the first part of this bill, in fact all of part I, is dedicated to the formation of the Alcohol and Gaming Commission of Ontario. Could you describe to the committee what that commission means, what its duties are going to be and basically what that means for inspection and enforcement issues?

Hon Mr Sterling: The gaming commission presently, and I'll speak in rough numbers here now, has about 110 employees and the LLBO has a similar number. It may be off by 20% or 30%, but there are somewhere around 120 to 140 employees at the LLBO. We believe that by putting these two agencies together, the ability of inspec-

tors to be out there in the field and watch what's going on will be greatly enhanced because in some cases they will be able to have a mixed role. In other words, they not only will be liquor inspectors, they will be gaming inspectors in some cases as well. Therefore, the utilization of these inspectors will be greater and more efficient.

The other part is that when you amalgamate two agencies like this, there are significant management savings with regard to how you conduct your business overall, so we will be gaining some efficiencies there as well. Notwithstanding the fact that we're joining these two bodies — I've used figures like 120 and 100 or something of that nature — the actual agency, the joint agency of the Alcohol and Gaming Commission, will be growing in size. Part of that has to do with the Rama casino, because there are about 20 people hired by the gaming commission to deal with that particular facility and a similar number will be needed in Niagara Falls when that is up and running as well.

When we get into the charity gaming halls we will again need an inspector or a number of inspectors in each and every one of those gaming halls located in the province, so it will be much better organized in terms of our ability to deal with the inspection part.

The second part is that we will be able to enforce the laws, I believe, in a much more evenhanded and better manner in terms of the hearing processes that are being developed for this joint commission, and the expertise of the board will be enhanced in terms of hearings that will be undertaken.

Our plan is to make things like an application for a liquor licence more of an administrative process. Only when there is a problem will we go to board hearings and those kinds of things.

In addition, we're modernizing the whole administration regulatory process of the joint commission.

I'm looking forward to that; as well, I might add, as I've mentioned in my opening remarks, about stripping away from the LCBO any of their regulatory functions which have long been a thorn to competing retailers. The Brewers Retail system is not very happy that another retailer of beer is in fact controlling their activities and their decisions, and I don't blame them for that.

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It's my hope, too, that the new Alcohol and Gaming Commission will be more vigilant in terms of actually what's happening in the LCBO stores. It's always been strange to me that there have been so few prosecutions under the LCBO system for people selling to minors. I'm not saying they are cavalier about it, but you would think that with the number of stores we have — 600 — and the number of years this institution has existed, there would have been a lot more prosecutions in that area. I suspect the LCBO will be under greater scrutiny as well in terms of its retail sales.

That host of reasons is why we're creating this new agency. I believe it's a great step forward and that we will have better quality and more efficient services.

Mr Terence H. Young (Halton Centre): Minister, what impact will this merger have on the employees of the two agencies involved?

Hon Mr Sterling: We have two unions. The two distinct entities are both schedule 1 agencies. Together they will be schedule 1. We had hoped that the two unions could have decided on one bargaining agent as between them, but unfortunately we were not able to get either one of them to bow out. Therefore the new agency will be hiring its employees, and under the contracts they have with these two unions, they will be making every reasonable effort to hire former employees of both boards. Then I guess it's the full expectation that the new employees will choose whatever bargaining representative they would like. It will be done in a democratic way and they will make their choice as they proceed down the path.

As I say, we had hoped there could have been some negotiation between them and one would bow away, but that did not happen and we are now in a position where we will be hiring the employees and keeping within our bargaining agreement to make every reasonable effort to hire each and every one of those former employees, and in an expanding commission, which I explained before, I expect that most will be offered those employment opportunities.

Mr Douglas B. Ford (Etobicoke-Humber): I've got one other question, Minister. How will the amalgamation benefit the taxpayer and provide better service?

Hon Mr Sterling: I think, Mr Ford, I sort of alluded to that previously. One thing is that as early as six or eight months ago anyone who is watching, I am sure, within those boards could have seen that part of our business plan of our ministry was to do this. I appointed Clare Lewis, who was then the chairman of the gaming commission, to become also the chair of the LLBO. We will have, of course, one board instead of two boards and we will have one chairman instead of two chairmen. We will have people who will be fulfilling the dual function, especially under this legislation, whereby a person who is running a licensed establishment and allows a person who is underage to play a video lottery machine is under the dual penalty, I guess, of not only having a fine but could lose their licence as well. By combining the two, it helps us control to a greater degree the video lottery machines and regulate those video lottery machines in licensed establishments when this takes place.

Ms Isabel Bassett (St Andrew-St Patrick): Following up on that, Minister, why has the government introduced an amendment to the Liquor Licence Act that could mean up to a two-year suspension for property owners on any further applications for licences on problem premises?

Hon Mr Sterling: We've had trouble in certain parts of our province, not in very many of them. This amendment is a very stiff sanction against a property owner. Unfortunately, what seems to have happened is, notwithstanding the fact that you would have a prosecution being undertaken under the Liquor Licence Act and you would be in the stages of prosecuting individuals for just flouting the laws in terms of the liquor establishment, this problem would persist and persist. A community would get together and take on the landlord and the lessee in terms of saying it's not in the community interest to have a licence issued to this lessee. No sooner had they walked through that process than all of a sudden there's another

lessee who appears on the scene and continues on as they have in the past. They were using the process to drag these particular hearings out and the community would never get any relief from these very bad places.

We're not just talking about somebody who had an intoxicated person in their premises on one occasion or had even served an underaged person or not asked for the age of majority card, but we're talking about situations where there are drugs, prostitution etc; very bad places. We're just saying: "Landlords, you can't just walk away from these things. You have to take some responsibility to act in a reasonable manner to ensure that your lessee is not going to go flout the laws."

We've had a problem in Scarborough with absentee landlords who basically don't care to whom they lease and it has resulted in the disruption of some neighbourhoods immensely. When you can't have your kids walk by and down a certain street because of the activity going on inside and outside the restaurant — I'm talking about drugs and prostitution — then there's something wrong in our system. It was thought that this would address that. It's very strongly supported by our colleague Derwyn Shea, who is close to one of those areas where they have a lot of trouble.

The Chair: There are three minutes left. Are there any further questions?

Mr Frank Klees (York-Mackenzie): There were suggestions made earlier in comments from the opposition members. The implication that was left was that these video lottery terminals would be on every street corner and in every location across the province. I wonder, could you clarify for the record where these VLTs would be placed initially and then what the process would be to extend them to other places in the province?

Hon Mr Sterling: No matter where these video lottery machines are located, they will be located in areas where it will require some expense on the part of the proprietors to house or host them. First of all, they will be at racetracks where people go to wager under any circumstance and that kind of thing. But the area where they would have video lottery machines will have to be an area which is segregated from the rest of the racetrack because you won't be able to allow children or anybody under the age of 19 into those particular areas. That in itself will be contained tightly.

They won't be allowing anybody under the age of 19 into the charity gaming halls because there will be video lottery machines. The norm for the charity gaming hall will be 40 table games and 100 of these machines. I asked for a clarification on that because of what was said before. That's our first stage in terms of putting them into those two areas.

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Then our second stage will be to put them into licensed premises where that particular area of the bar would have to be segregated off and away from the other part of the bar or restaurant or wherever anybody under the age of 19 was permitted to be.

There will be a demarcation between stages 1 and 2, and the actual process for going from stage 1 to stage 2 will involve some consultation with the members of the Legislature as well as with the outside world.

The Chair: Thank you very much, Mr Klees. Our time is up.

Mr Kennedy: On a small point of order, Mr Chairman: There was a reference during the minister's comments to information that could be supplied by staff. Is it a general understanding that we would have the information specifically concerning the scope and full-year revenue projection? Is that agreed?

Hon Mr Sterling: The 100 machines and the 40 tables?

Mr Kennedy: I appreciate that clarification. There was another to do with the full-year revenue projections. There was some question when you made your remarks whether they were part-year or full-year projections. I'm wondering if we can have that supplied afterwards by staff.

Hon Mr Sterling: I have to refer to Mr Eves's statement, because I'm promising something that I don't know.

Mr Kennedy: There is no projection of full-year —

Hon Mr Sterling: I'm sure there is, but I can't promise for him. I will ask him what he meant by the \$185 million.

The Chair: Thank you, Mr Sterling and Deputy Minister Lal.

MINISTRY OF CONSUMER
AND COMMERCIAL RELATIONS
MINISTRY OF ECONOMIC DEVELOPMENT,
TRADE AND TOURISM

The Chair: Two hours have been set aside for the technical briefing. Ms Kirk and Mr Harper, you are on first. How long will your briefing take, without questions, approximately?

Ms Teri Kirk: Although two hours has been allowed, we'd thought about 45 minutes would be sufficient.

The Chair: Yes. There's someone here from the Ministry of Economic Development, Trade and Tourism. How long will your briefing take?

Ms Kirk: That's included in the 45 minutes.

The Chair: It would not seem to be a problem.

I should mention, before I lose members of the committee, that the taxis will be leaving here from Queen's Park directly after the hearings tomorrow to take us to the airport so that we can proceed to Thunder Bay. I suggest that you might bring your baggage tomorrow if you are proceeding to Thunder Bay and Kenora, as I know Mr Guzzo is looking forward to.

In addition, Mr Crozier, will you be attending the subcommittee meeting? We need one at the end of today.

Mr Crozier: I'll be right back, sir.

The Chair: Okay. Thank you. If you will proceed then.

Ms Kirk: I'll just take a moment to introduce the individuals. My name is Teri Kirk, director of legal services with the Ministry of Consumer and Commercial Relations. Rob Harper is our policy analyst with responsibility for gaming and alcohol regulation in the province. Neil McCallum, from MEDTT, is legal counsel with that ministry.

As the Minister of Consumer and Commercial Relations has indicated, the bill has two broad purposes. The

first is to provide for the regulation of video lotteries in the province and the second is to introduce a number of measures that will increase the efficiency by which alcohol and gaming regulations are administered.

What I propose to do is take approximately 15 to 20 minutes to highlight the purposes of the bill and the way in which the bill is organized to achieve those purposes, to make members familiar with the language of the bill on a section-by-section basis. Mr McCallum will then clarify the video lottery aspects of the bill, which will be administered by the Ontario Lottery Corp, which is the responsibility of the Ministry of Economic Development, Trade and Tourism. Then Mr Harper will highlight the aspects relating to the new commission and alcohol and gaming regulation.

The bill, as was indicated by some honourable members, is very short. It consists of only eight sections which are divided into three broad parts. The purposes of the bill are firstly to establish the new commission which you heard the minister make reference to, the Alcohol and Gaming Commission. The purpose of that commission will be to be responsible for all liquor and gaming regulation in the province. It will supersede the role of the existing Liquor Licence Board of Ontario as well as the Gaming Control Commission.

In addition, the bill facilitates the eventual transfer of regulatory functions which are now carried out by the LCBO to the new Alcohol and Gaming Commission. The reason for doing that, again as indicated by the minister, is really twofold. One is to put all responsibility for liquor regulation under one house. Currently it's divided between the LCBO and the LLBO. The second is to alleviate an age-old perception of a conflict of interest on the part of the LCBO, which serves both as a regulator of liquor as well as a retailer of liquor in the province.

The third broad purpose of Bill 75 is to introduce the regulation of video lotteries. I won't say to introduce video lotteries — that activity is already going on in the province — but to introduce a regulatory scheme for dealing with video lotteries. The management of video lotteries will be carried out by the OLC, the Ontario Lottery Corp, and the regulation of video lotteries will be carried out by the Gaming Control Commission, so you will not get into the position that the LCBO is currently in, where it's both a regulator and a service provider. The regulatory aspect will be carried out by the new commission and the operational aspects will be carried out by the Ontario Lottery Corp.

The fourth broad purpose is to provide for an orderly distribution system for revenues from the Rama casino. As we know, Casino Rama is now operational and this bill, if passed, will ensure that the proceeds from gaming at Casino Rama are distributed in an orderly fashion.

The fifth provision: The minister did respond to questions from Mrs Bassett on the establishment of a public interest provision. This is really an extension of existing public interest provisions that grant discretion to the board in circumstances where an application has been refused on the basis of public interest. The board will now have authority to put in place a similar two-year moratorium or freeze where a licence has been revoked on the basis of public interest. The purpose of that section is to give a community greater input not only into

the initial applications by applicants but in circumstances where licences are being revoked.

I think it's important to note that where there has been a significant change in circumstances during a two-year period, the board will have discretion to waive the two-year freeze, to lift that ban and to allow an applicant to come forward and indicate that the impact on the community of a licence would no longer be detrimental.

Finally, and this probably accounts for most of the bill, is to make to a number of acts some complementary amendments that are really very minor and housekeeping in nature to facilitate the establishment of the new regime.

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I'd like to very briefly turn to the act and walk through it with you on a section-by-section basis. As indicated, it's only eight sections long and it's divided into three broad parts.

Part I of the bill introduces the new Alcohol and Gaming Commission, and to do that it enacts a statute which will be known as the Alcohol and Gaming Regulation and Public Protection Act. The provisions of that act are set out in a schedule to Bill 75, and that schedule consists of 17 sections.

Section 1 of the act, again, establishes the new commission, sets out a schedule to the act; the schedule has 17 sections and in those 17 sections the new commission is established. Those 17 sections provide for very straightforward, statutory-type provisions and definitions.

Section 2 of the schedule indicates that there will be a new commission that shall be known as the Alcohol and Gaming Commission of Ontario, provides for a board of directors and for order-in-council appointments of members of that board.

Section 3 sets out the broad duties of the commission, which will be to be responsible for the administration of regulations under the Liquor Licence Act, the Wine Content Act, the Gaming Control Act and, in future, the Liquor Control Act.

Section 4 sets out the broad powers of the commission and gives them authority to establish guidelines that will govern their day-to-day operating procedures.

Section 5 allows the board to delegate some of its duties to its employees, which is typical of a corporate organization or a government agency.

Section 6 establishes a registrar of alcohol and gaming as a statutory official under this new regime. Sometimes these officials are called directors under the act, sometimes registrar. The word selected here has been the registrar of alcohol and gaming, and they will be the sole statutory official. That person may in turn, of course, delegate duties to other employees of the organization.

Section 7 allows the organization to hire its own employees, as indicated. Therefore, they will not be hired under the Ontario Public Service Act but will be hired directly under this act. Therefore, their status will be as crown employees.

Section 8 provides for the revenue for the new organization. Moneys will come out of consolidated revenue up until the end of this fiscal year, and then the Legislature will appropriate funds directly to the organization.

Section 9 will require that the board shall file an annual report, which would be submitted to the Lieutenant Governor in Council.

The next four sections really consolidate proceedings that exist under both the current liquor licensing regime and the gaming regime, and there are some differences in the way those two existing boards carry out their hearings, whether appeals are available to the Divisional Court and so on. Sections 10, 11, 12 and 13 set out the process for hearings, appeals to the Divisional Court, for service of documents and for the granting of certificates by the registrar.

Section 14 allows the organization to put in place fees and charges. This is consistent with the government's efforts to eliminate red tape and to not require a regulation-making process in order for an organization to change its forms or put forward forms. Its fees will require ministerial approval, but the organization will be able to design its own forms without needing to go through the regulation-making process.

Section 16 is the standard regulation-making power. One thing I would draw to your attention is that because the scheme of the act preserves the two existing acts — the Liquor Licence Act and the Gaming Control Act — rather than going through on a section-by-section basis and amending those acts to say who in the new organization will carry out each of those duties, instead a broad regulation-making power has been established that will allow the Lieutenant Governor in Council to determine which of the regulatory functions now carried out in either one of the existing organizations will be carried out either by the board or by the registrar of the new organization. So it's clear that the new organization will carry out those duties that are now carried out by the two other organizations, and the regulations will stipulate whether it's an adjudicative-type duty to be carried out by the board or an administrative, management-type duty to be carried out by staff.

The next part of the act includes section 2 to section 6 of the act, and each section sets out some complementary amendments to the statutes being amended by this act. Section 2 sets out some complementary amendments to the Liquor Control Act, section 3 to the Liquor Licence Act, section 4 to the Gaming Control Act, section 5 to the Ontario Casino Corporation Act, and section 6 sets out some amendments to the Ontario Lottery Corporation Act. As indicated, those amendments are largely housekeeping in nature. If reference is made to one statutory official and a name is changed or section numbering is changed and so on, those sorts of amendments are made.

I will draw to your attention, though, the amendments that are more substantive in nature. In section 3, the Liquor Licence Act is amended and there are two substantive amendments. The first is to set up some complementary support for the notion that video lotteries are not to be participated in by children under the age of 19. If one is operating a licensed establishment with video lotteries and one is allowing minors to participate in video lotteries, there are sanctions under the Liquor Licence Act for doing so. The other substantive amendment is the two-year moratorium when there has been a revocation on the grounds of the public interest, which we've already discussed.

The substantive amendments to the Gaming Control Act are to expand the definition of "game of chance" to include video lottery. In addition, the Gaming Control Act will now require that suppliers of goods and services for prescribed lottery schemes be registered under the Gaming Control Act. That becomes the means by which suppliers to video lotteries are subject to the regulatory authority of the new liquor and gaming commission.

Sections 5 and 6 amend the Ontario Casino Corporation Act and the Ontario Lottery Corporation Act, and Neil will return and highlight those for you.

I would just mention in finishing off, in our review of the bill, that the last sections are found in part III of the act. They are section 7 and section 8, which simply set out the provisions for proclaiming this act in force and the title of the act, which is the Alcohol, Gaming and Charity Funding Public Interest Act, 1996.

Thank you very much, and I'll turn to Mr McCallum.

Mr Neil McCallum: As the minister and Teri have said, this is very much enabling legislation. The amendments proposed for the Ontario Casino Corporation Act and the Ontario Lottery Corporation Act are permissive in nature and designed to allow the dovetailing of the Ontario Casino Corporation Act and the Ontario Lottery Corporation Act into the scheme of the bill before the House.

To turn first, then, to the Ontario Casino Corporation Act, there are two amendments being made, and I believe you have in your materials copies of the current Ontario Casino Corporation Act. Basically, what's being done there are amendments to subsection 15(1) to effect the order of payout. Paragraph 4 is a required amendment to permit the payout to be made under subsection 8(2) of the Alcohol and Gaming Regulation and Public Protection Act. The payments referred to in paragraph 5 are payments made under agreements which may be entered into between the corporation and the people who are involved with the Rama casino.

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You'll notice there that those are subject to the approval of the Minister of Finance, so there is an intended balance between the ability to make negotiations between the corporation and those who are interested in it and the ability to supervise those contracts from a government perspective.

The Ontario Lottery Corporation Act will be amended by the addition firstly of two new definitions in section 1. These definitions are "video lottery" and "video lottery terminal." They are necessary amendments so that the game can be discretely identified for the purposes of both the controls that the bill requires and also for the dissemination of revenues that are gained from the video lottery schemes.

You would see, for example, that the bill introduces controls in section 8.1, beginning at subsection (2). The first parts, clauses (a) and (b) of subsection 8.1(2), introduce prohibitions on the proprietors of premises, those in control of premises where there are video lottery terminals. Essentially, those are directed to prohibiting people in control of the premises from allowing persons under the age of 19 years to have access to any area

that's been set aside for video lottery terminals or in any way to let a person under the age of 19 play the games.

Subsection 8.1(3) introduces prohibitions on individuals under the age of 19 from attempting to gain access to the controlled areas where video lottery terminals are located or to attempt to play a video lottery game.

There are a couple of saving provisions. The onus on the production of documentation rests, of course, with the person who is in control of the premises where the lotteries are carried out. If you look at subsection 8.1(5), you'll see that where someone is in good faith relying on documentation proposed to sell a lottery ticket or to permit someone to operate a video lottery game, that person has not committed an offence. So that's one important saving provision for those who are in charge or in control of the premises.

Where the sections are contravened, I think you should note that the penalties are very severe. In the case of an individual who permits a minor to play the games, the offence created on the prohibition is \$50,000 in the case of an individual and \$250,000 in the case of a corporation. A minor who enters a restricted area containing video lottery terminals or attempts to play the games would also be committing an offence and would be subject to a fine, as I understand it, of up to \$10,000. Those you can find in subsection 8.2(1).

To turn back to the act, you'll note that section 8 of the act has been substantially changed, basically to broaden the regulation-making power and to set out the power to prescribe the kinds of documentation that are necessary for a minor to have. I guess I put that a little badly — that it's necessary for a person to have to prove that he is not a minor for the purposes of gambling.

The next section I'd like to draw your attention to is section 8.3, where the Lieutenant Governor in Council could appoint a person to undertake a comprehensive review of the provisions of the act relating to video lotteries five years after the implementation of video lotteries in Ontario. This is a reasonably common provision. It's often mandatory. In this particular case, the government is proposing that the Lieutenant Governor have the capacity to appoint someone to review the results of this initiative. As I say, that is becoming more and more common in legislation.

Section 9 of the Ontario Lottery Corporation Act is similarly being amended by the addition of a new subsection, subsection (2), and here the amendment is quite important. It permits the distribution of the discrete moneys associated with video lotteries to be directed by the Lieutenant Governor. They are therefore within the control of the government, as the minister has indicated.

I don't believe there are any other pertinent pieces of the bill that affect either the Ontario Lottery Corp or the Ontario Casino Corp.

Ms Kirk: Thanks very much, Neil. We'll hear from Rob, then, on the establishment of the new commission.

Mr Rob Harper: There are just a couple of points I'll add to what Teri has said in terms of the legal structure in part I of the bill that creates the new Alcohol and Gaming Commission of Ontario, just to try to outline for people how the commission administratively is supposed to function and what changes may occur in the transition

from the administration of the two statutes, the Liquor Licence Act and the Gaming Control Act, by the current boards and commissions.

Part I of the act creates the commission and its board and the registrar and basically sets out a structure in which the registrar, who is an administrative official, shall have carriage of all the enforcement- and licensing-related powers and decisions on a first-case basis. So the registrar will be the official who makes decisions on licence applications, on whether to freeze trust accounts that may have moneys in connection with gaming activities and so forth, the various powers created under the Liquor Licence Act and Gaming Control Act.

Where there is a right of appeal or hearing from such a decision, that hearing will be conducted by the board of the new commission. That is a structure similar to what is currently in place under the Liquor Licence Act at present.

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In carrying out the various amendments in order to create this hearing structure, it's been our objective neither to take away from nor add to anyone's current hearing or appeal rights in the sense that if someone had an appeal of a decision under the previous statutes, they would have an appeal under this statute. If someone did not have an appeal under the previous statutes, they wouldn't have an appeal under this statute. It's simply a question of creating a single process. Previously, appeals of decisions in the gaming sector were made to a separate panel of the Commercial Registration Appeal Tribunal and it was felt, for efficiency purposes, it was best to consolidate this process into one procedure, but also to create a distinction between the role of the board as an adjudicative body and the registrar as a licensing and enforcement official.

As Teri pointed out, the regulation-enabling sections of the statute deal substantively with assigning the powers that will be assigned to the board under the registrar in order to carry out this distribution of powers and also deal with the transition of designated powers from the Liquor Control Board of Ontario under the Liquor Control Act to the new commission. As the minister outlined, it is intended to use that enabling authority to designate powers of the Liquor Control Board of Ontario that are deemed to be regulatory and which would be better consolidated with the new Alcohol and Gaming Commission of Ontario.

The other point I would like to make in terms of substantive amendments, which in the grand scheme of things is perhaps not that significant, but it is a substantive amendment and it creates a new offence and it should be drawn to your attention, is under the Gaming Control Act. I believe it's section 19 of the bill which amends subsection 42(6) of the Gaming Control Act. A new offence has been created for failing to abide by a term and condition of registration under the Gaming Control Act.

As with many licensing schemes, it's very common for quite a few of the requirements that are placed on a regulated party to be placed on them through terms and conditions on their registration or licence. At present, it is only possible where someone fails to abide by such a

term and condition to simply revoke their registration and it was felt in particular, given the expansion of gaming opportunities to include video lotteries, that we wanted to ensure that a stronger sanction was available where someone had failed to abide by a term and condition, so a new offence has been created giving the possibility of prosecution as well as suspension or revocation of a licence where someone fails to abide by such a term or condition.

I think Teri has mentioned — certainly I know it was mentioned, perhaps by the minister in answer to a question — the fact that the new commission will appoint its employees under a provision in the statute that will make them crown employees as opposed to public servants appointed under the Public Service Act. In part, what that will do is it will allow the new commission to extend offers of employment to employees of both existing agencies, and the government certainly expects that the employees of the new commission will likely organize and be represented by one or more bargaining agents at the end of the day.

I think that pretty much summarizes what we have to say in terms of the legal structure of the bill and how it's attempting to amend the various statutes concerned with liquor and gaming to implement the initiatives carried out under the May budget.

There is perhaps one final point I would make just for clarification. I find it's come up a couple of times since the announcements of the budget and the release of the bill. People frequently wonder where in the bill do we see charity gaming halls, since they are spoken to in the budget initiatives and in connection with video lotteries and so forth. The bill does not directly speak to charity gaming halls. Those are regulated under an OIC, an order in council, under the authority of the Criminal Code and the move from roving Monte Carlo events to the establishment of permanent charity gaming hall sites will be carried out by an amendment to that OIC. Where the bill is relevant to the halls is in fact in creating the operational, in terms of the Ontario Lottery Corp, and regulatory, in terms of the Alcohol and Gaming Commission, structure that will oversee the video lottery machines that the halls will be eligible to host. I think that concludes our comments.

The Vice-Chair (Mr Ron Johnson): I thank all three of you for your information. We're now going to turn to questions, starting with the third party, in 15-minute blocks. Mr Kormos, you'll be first.

Mr Kormos: Thank you kindly. First to the staff person from the Ministry of Economic Development, Trade and Tourism: The minister has spoken of slot machine gambling as entertainment and speaks of it as a complement to the entertainment industry in Ontario. In the area of policy development, is it the understanding of the ministry, particularly yours, economic development, that this is a true complement in that it will draw new money that isn't currently being spent on entertainment, or will expenditures, as spoken of by the minister, on slot machines detract from expenditures in other areas of entertainment?

Mr McCallum: Mr Kormos, I must say I really don't have any firm information on that myself, nor am I sure

that the department has any firm information, but certainly intuitively one would anticipate that the introduction of a new game of this sort would tend to expand the market somewhat. I take your point very well that there probably would be cross-elastic effects and that indeed some diminution in the playing of other games would occur, other forms of entertainment perhaps. I simply don't know. Those are my own intuitive thoughts.

Mr Kormos: But no examination of that at a formal level within the ministry?

Mr McCallum: I'll undertake to review that matter with the department. If there is anything we'll certainly provide it to you.

Mr Kormos: Please. Thank you, sir.

Mr Harper, the minister, as you know, spoke of one of the rationales for introducing 20,000 slot machines into communities as a response to the phenomenon of illegal slots across the province. What type of interministerial work has been done with the Ministry of the Solicitor General in terms of that observation and justification by the minister between the Ministry of Consumer and Commercial Relations and the Ministry of the Solicitor General?

Mr Harper: I'm not aware of any specific work undertaken between our ministries although, as you may know, the enforcement wing of the Gaming Control Commission actually consists of about 42 to 44 OPP officers who were seconded from the Ministry of the Solicitor General. It's expected that would continue with the new agency.

From our perspective, where we see in particular this initiative helping to deal with those issues is that by merging the two existing regulatory bodies into one agency and giving that agency responsibility for both liquor and gaming regulation administratively as well as then the legislative provisions that are introduced to strengthen the ability to deal administratively with people who have committed violations and basically put people in a dual-jeopardy situation, we feel that this will give us a better ability to deal with problems at licensed premises.

Furthermore, in creating opportunities for people who are interested in playing these sorts of games to do so at racetracks and at charitable gaming halls and eventually at licensed premises, that will give them an opportunity to play machines that they have some assurance are meeting standards that have been set by the Ontario Lottery Corp and where the funds from those machines are being used to assist charities and other public purposes. We think that will help divert funds away from the illegal market.

Mr Kormos: What prototype of slot machine is proposed to be used in the 20,000 locations?

Mr Harper: I think there are a number of varieties of electronic video lottery machines available in the marketplace, and the question of ascertaining what particular type of machine should be used is an operational decision that the Ontario Lottery Corp will be making as part of developing the implementation plan. As far as I'm aware at this point, we're still some way from deciding upon particular models of machines.

Mr Kormos: Do you consider slot machines to be entertaining?

Mr Harper: Personally, I don't consider lottery tickets to be entertaining, but —

Mr Kormos: That's not fair. I just threw that in. That has nothing to do with policy development.

The comment by the minister that 2% of revenues are going to be dedicated towards treatment of gambling addictions, again from your viewpoint as a senior policy adviser for the Ministry of Consumer and Commercial Relations, clearly that's an acknowledgement of the fact that slot machines are going to create enhanced levels of addictive gambling, isn't it?

1530

Mr Harper: I think, as the minister pointed out, we have at the moment close to \$10 billion — I think the latest figure I've seen is about \$9.6 billion — of legal wagering in Ontario presently, and also a very substantial amount of illegal wagering, as the current problem with illegal video lottery terminals demonstrates, and this exists whether or not we have this new initiative. Obviously, intuitively, as you make new gaming opportunities available to people, that creates new opportunities for people who are predisposed towards problem gambling to have problems with those opportunities.

I think from the government's perspective that allocating these revenues deals with issues in respect of this particular initiative, but will also help to deal with problem gaming issues that have arisen as a result of casino gambling, bingo halls, horse racing, lottery tickets and the variety of legal gambling initiatives that is already in place in Ontario, and also deals with people who have problem gambling, issues dealing with illegal gambling.

Mr Kormos: As a senior policy adviser, you were here when we spoke with the minister about these studies that indicate that as age increases, one is less likely to use a slot. I'm not suggesting that one is less likely to gamble, but the data show one is less likely to be attracted to the slots. The slots have a compulsive attraction to young people, and you heard, albeit anecdotally, the information provided by the Gamblers Anonymous organization in Alberta indicating that the vast majority, up into the 90-plus percentile, of callers complaining about gambling problems are people who play the slots. The minister did ask you for information and data about the enhanced addictiveness of slot machines over other types of gambling, didn't he?

Mr Harper: These sorts of issues are being looked at primarily by the Ministry of Health in developing the problem gaming strategy. Actually, I've lost my train of thought in terms of one of the points you had made that I wanted to respond to.

Mr Kormos: Let me help. Surely you as a policy adviser for the Ministry of Consumer and Commercial Relations — which has the lead on this program, doesn't it?

Mr Harper: We have the lead in terms of the regulatory component dealing with the creation of the new Alcohol and Gaming Commission and establishing the regulatory framework that suppliers for charity gaming halls and video lottery machines have to comply with.

Mr Kormos: Which is what it's all about, is it?

Mr Harper: From our perspective it's what it's all about.

Mr Kormos: That's what it's all about. That's the guts of it, the viscera of it, isn't it? There's little left to be added on, isn't there?

Mr Harper: There are also operational issues and a substantial part, I think, of what people are going to be interested in in the hearings is going to be operational issues about how they obtain business opportunities, how particular charities or organizations obtain opportunities to revenues, how they are going to be allocated, regional questions which are more operational issues.

Mr Kormos: I'll take your direction in this. I'll go back to the Ministry of Economic Development, Trade and Tourism.

Mr Harper: I'm not trying to shuffle things off till I consult the ministry. I'm just trying to deal with what I can.

Mr Kormos: I appreciate your candour. From the Ministry of Economy Development, Trade and Tourism's perspective, are slot machines being perceived as a phenomenon or as a tool to achieve economic development?

Mr McCallum: In all candour again, Mr Kormos, I'm a lawyer; I'm not involved in that aspect of policy development. Certainly from what the government has stated one would draw the conclusion that in a tourism sense, for example — I've heard your comments and the comments of others — if people are making a decision to travel to a jurisdiction and they're looking at a panoply of attractions that are available and gambling is there, perhaps that does enhance the destination. Those are my own views, based on what I've been able to garner from public sources. But certainly one would have to conclude that it doesn't detract from Ontario as a tourist destination. In fact, it enhances it. That would be an intuitive conclusion, I think.

Mr Kormos: Okay. Then again, from the point of view of your role in policy development, what is the anticipated mode of distributing slot machines? Is it going to be per capita? Are there going to be models of that type that indicate that there are going to be X number of slot machines per 1,000 population?

Mr McCallum: My understanding from the government's statement is that it intends to have the lowest number of machines per capita of the jurisdictions in Canada certainly. Where they would be located —

Mr Kormos: Twenty thousand slots?

Mr McCallum: That is my understanding, that there would be 20,000 slot machines, and that on a per-capita basis that would represent the lowest number in Canada. Am I correct?

Ms Kirk: Yes.

Mr McCallum: Apparently I'm correct — a rare thing.

On a distributional analysis — where they will go — that's very much an implementation consideration, Mr Kormos. That would be based on business decisions, certainly things that I know very little about, and I don't think those decisions have been made at all. My friends from CCR may be —

Mr Klees: On a point of order, Mr Chairman: With all respect to Mr Kormos's questions, I believe staff are here to answer technical questions. These are questions relating to policy to which these staff should not be responding.

Mr Kormos: Chair, let me respond.

The Vice-Chair: Well, Mr Kormos —

Mr Kormos: No, let me respond. A point of order has been made. What could be more technical than to talk about the design or the model for distribution of this machinery? What could be more technical than talking to a manager of policy development from the Ministry of Economic Development about the model for economic development that's being used when you're placing slots across the province?

The Vice-Chair: Mr Kormos, I will remind you that these individuals are staff, and if in fact they deem a question to be inappropriate then they will indicate that in the answer. Continue to ask your questions. You've got about five minutes left. If staff feel uncomfortable answering a specific question, they should indicate so to the Chair.

Mr Kormos: I like these people.

Mr Klees: Perhaps I could rephrase my point of order then, if I might, and that is that I would ask that staff keep themselves to responding to technical matters and that if there is a question relating to policy, they defer on that.

Mr Kormos: Chair, I've got to make an observation. Mr Klees is a lawyer. One would have thought he was a dentist because he's sure familiar with the practice of applying some Novocaine once the drilling starts hitting the nerve. What we're witnessing here —

The Vice-Chair: Just a minute here.

Mr Kormos: What we're witnessing here —

The Vice-Chair: Mr Kormos, sorry, I'm going to interrupt.

Mr Klees: With respect, I am not a lawyer, for the record.

The Vice-Chair: Mr Klees. Mr Kormos, I'm going to ask you to continue with your questioning. If staff feel uncomfortable answering a particular question, they should just indicate to the Chair that they are. Mr Kormos, your next question, please.

Mr Kormos: I'll use my time as I deem appropriate. I want the Chair and the committee to consider that Mr Klees just winked and nodded to the staff people, as much as indicating to them that they'd be best advised to clam up, to zip up, so to speak. I think that's a really offensive sort of exercise. Surely it could have been done more subtly. As the parliamentary assistant, Mr Flaherty could have passed a note to him saying, "We're skating on thin ice here." Clearly the government is as embarrassed as the minister should be about the total lack of preparedness of the government and the inability of these people, who have been very candid, to indicate that there has been any specific addressing of any number of issues that have been posed to them.

I think what we're witnessing here is an illustration again — no criticism of these staff people, but what we're witnessing here is we heard the minister earlier skate around and dance around and avoid questions and

shrug his shoulders and say: "Gosh, I don't know. Beats me. Never been done before. We're going to have to try it before we find out." Now we find staff people who are being admonished by a government committee member to clam up, to zip up.

The Vice-Chair: Mr Kormos, I'm going to have to stop you there; your time has expired. We're going to continue now to the government side for 15 minutes of questions.

Mr Kormos: It's called damage control. It's going to be difficult in the circumstances.

1540

Mr Klees: I'd like to address my question to the staff member from economic development. It relates to your — I believe you were dealing with the Ontario Lottery Corporation Act, where you referred to definitions that were being used in this act.

Mr McCallum: That's correct.

Mr Klees: In subsection 6(1) there are two specific definitions, and I'm assuming that those definitions are in this act for a reason. One under 6(1) is "video lottery," and the other is "video lottery terminal." I'd like to ask you specifically, in your learned, technical opinion, if this act were dealing with slot machines, would this definition be different?

Mr McCallum: With respect to the definition of "video lottery terminal," certainly any slot machine I've played doesn't operate that way.

Mr Klees: Thank you very much. With that in mind, Mr Chairman, I might strongly suggest that if this is to be a meaningful series of meetings that we have, members of this committee keep their references to the terminology that is being used in this act. Repeatedly, members are referring to slot machines. There is nothing in this act that relates to slot machines.

Mr Kormos: Of course not, Chair.

Mr Klees: Would you agree?

Mr McCallum: There is no reference to slot machines in this act.

Mr Klees: In fact, this act does not relate to slot machines. Isn't that true?

Mr McCallum: Yes, that's correct.

Mr Klees: That is correct? If that is correct, then I would strongly suggest that from this point forward, in the interests of not misleading the public and ensuring that these hearings are credible, members of this committee continue to refer to video lottery terminals so that we all know what the debate is about and what we're trying to clarify. If we could have agreement from members of this committee that from this point forward that is the terminology we use, I think it would be helpful for everyone.

The Vice-Chair: Are there any more questions from the government side? At this time, we'll now move to the official opposition for 15 minutes.

Mr Kennedy: I'd like to ask about the definition as well. I won't waste the time talking to the honourable member's suggestion. We'd like to know more about why it was necessary to make a special reference to video lotteries — in other words, obviously they're not lotteries ipso facto — and particularly what compliance is required with the Criminal Code in the definition that is made

here. I'm wondering if we could get a little bit more information about that.

Mr McCallum: Sure. "Video lottery," as defined, is a subset of a lottery scheme for the purposes of the Ontario Lottery Corporation Act. It is necessary in the scheme of legislation that's put forward in Bill 75 to define that so that when you turn over to subsection 9(2), a new subsection proposed to the Ontario Lottery Corporation Act, you'll note that, "The Lieutenant Governor in Council may direct that the corporation pay part or all of the proceeds from the video lotteries at specified times," and it goes on.

The lotteries have been earmarked, as I understand it, to pay for various things, including some resources devoted to dealing with problem gambling. There is a requirement that charities receive some sort of sum as well. In order to define the realm of revenues from which that's to be drawn, you have to define the video lottery. Certainly, the same is true with respect to the video lottery terminal. They have to be defined in order to create the offence. You have the terminals segregated. You have to know what you're having segregated. So when you look at subsection 8.1(2) where it states, "No person in control of premises where there are video lottery terminals," you have to define the term in order to create the offence.

Mr Kennedy: Yes. So the technical part of it is that in a sense. The other part though in terms of the definitional part that specifically says "compliance with the Criminal Code of Canada." What does that mean in this context?

Mr McCallum: Section 207 of the Criminal Code sets out an exception to the general rule governing gambling in Canada, and it says, "Notwithstanding any of the provisions of this part relating to gaming and betting, it is lawful (a) for the government of a province, either alone or in conjunction with" other provinces "to conduct and manage a lottery scheme."

Mr Kennedy: In effect, if the province of Ontario did not so designate these electronic slot machines as a lottery scheme, they would not be legal under the Criminal Code?

Mr McCallum: I guess the further advantage, the government of Ontario is permitted to conduct video lottery schemes. It would not be, it would appear, within the competency of a charity, which also has the capacity under section 207 of the Criminal Code to conduct and manage a lottery scheme, to carry that out. I certainly invite you to examine that part of the Criminal Code. It is a little complicated to deal with without sort of having — I don't know if you have it — do you have it in front of you?

Mr Kennedy: I don't at this moment, no.

Mr McCallum: It would certainly be worth looking at in order to get that level —

Mr Kennedy: Is there sort of a simple way to reference? This is an enabling clause, a definitional clause. If it wasn't there the video lottery terminals would have no legal basis, is that correct? In terms of the powers prescribed under the Criminal Code, the exception clause you referred to under the Criminal Code — is that correct essentially?

Ms Kirk: I think it's fair to say that the purpose of Bill 75 is to authorize this form of gaming in the prov-

ince, and if Bill 75 were not passed then this form of gaming would not be legal in Ontario.

Mr Kennedy: Is part of that related though to its definition as a lottery scheme, because that is what —

Ms Kirk: Yes, exactly.

Mr Kennedy: Okay. Also, is there meaning in terms of the information provided around the definition that talks to it as a freestanding unit?

Ms Kirk: The terminals, are you referring to?

Mr Kennedy: Yes.

Ms Kirk: Yes, there is a definition of the terminals as well.

Mr Kennedy: And in terms of the standalone — when you say in the explanation, “Because the nature of the game, standalone pay as you play, it’s necessary to identify it to comply.” Those features of the game make it distinctive, is that correct?

Ms Kirk: The definition of video lottery terminal, the aspect that makes it distinctive, and was pointed out earlier distinguishes it in particular from slot machines, is that the play may result in the receipt of a credit that can be redeemed for further play. That’s really the distinctive aspect of video lottery terminals. It’s a system of credits and that there is no cash or money that the terminal itself makes available.

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Mr Kennedy: Do you call a slot machine a lottery scheme as well?

Ms Kirk: Slot machines are not something that are administered in Ontario. Video lottery terminals would be available under Bill 75 through this credit system.

Mr Kennedy: Under the acts regulating casinos there, is there not reference to the use of slot machines?

Ms Kirk: The slot machines are something that can be run by casinos but will not be within the jurisdiction of charitable gaming halls. Blackjack, roulette, what are now operated through the roving Monte Carlo evenings would be the sort of gaming activities that would be permissible in the charitable gaming halls as well as video lottery terminals.

Mr Kennedy: This will be established by order in council? Is that correct?

Ms Kirk: The order in council will be amended to establish the charitable gaming halls, and then Bill 75 will authorize the establishment of video lottery terminals in the province, including those located in charitable gaming halls.

Mr Kennedy: I wonder if the representative from economic development could comment on the legalities of requests for proposals, if they’ve already been made in respect of some of the operations of this act, and if so, what kind of status those would assume. We appreciate that the requests for proposals for different parts of this have been made or are about to be made. Is that usual practice? Could you comment on that.

Ms Kirk: I’m not sure that we’re in a position to comment on that. I’m not sure whether that is something in the public domain or not. I’d want to clarify that. Again I think it’s important to clarify what our role is here today, which is in support of Bill 75 and this legislation, to provide committee members with advice and information in respect of the bill. The operational

decisions will be made by cabinet once the legal framework is in place to allow such decisions to be made.

Mr Kennedy: That really is the nature of my question so I apologize for making it sound broader. Is the legal framework in place for requests for proposals to be made at this time?

Ms Kirk: No. Bill 75 is the legal framework by which video lotteries will become permissible, will become part of the law of Ontario. If Bill 75 is passed in the Legislature then the legal framework for making operational decisions about how video lotteries will be carried out will be in place. That’s not to say governments aren’t able to and don’t frequently move forward with policy- and operational-type planning in advance of third reading or proclamation of a bill. Therefore, as the minister has indicated, some operational planning is going on, but Bill 75 will be the legal framework under which those operational decisions —

Mr Kennedy: By convention then that does happen, but the strict legality of it, the framework has yet to be provided. Is that correct?

Ms Kirk: Bill 75, if passed by the Legislature, will provide the legal framework to allow video lottery terminals and video lotteries in the province.

Mr Kennedy: There was reference by the minister and I think repeated by staff around the limits that this government is undertaking. Is there any mechanism for those limits anywhere in the legislation?

Ms Kirk: No. The legislation again provides a legal framework by which video lotteries can be carried out in the province. Operational and financial decisions about how many terminals, how many charitable gaming halls, what types of terminals, what types of gaming activities will be carried on in gaming halls are operational and policy and political decisions.

Mr Kennedy: So there’s nothing in the legislation that proscribes that in any way.

Ms Kirk: No.

Mr Kennedy: This is an enabling bill. In fact, in terms of how we should consider the bill’s potential, the government can introduce as many video lottery terminals as it wishes once this is in place.

Ms Kirk: Like not only enabling legislation but legislation in general, it sets up a legal framework by which decisions can be made. Legislation is generally by definition flexible enough to allow for a variety of decisions to be made over a number of years, understanding that the legislation will likely endure over a fairly prolonged period of time.

Mr Crozier: I’m not sure who can answer this question for me, so I’ll just ask it and then perhaps you can help me, because I want, like Mr Klees, to make sure that over the next three weeks there’s no misunderstanding as to what we’re talking about.

I’ve admitted on other occasions that I’ve only been to Las Vegas once in my life. I can’t recall when I was there that I played any kind of machine. I recall that I played blackjack. I have yet to gamble in any casino in Ontario, so I’m not even sure what’s allowed and what isn’t allowed in the province of Ontario.

There seems to be a great deal of concern over what we refer to as a slot machine and what the act says is a

video lottery terminal. One part of my confusion is that the minister, if not earlier today at the hearing then at least out in the scrum, said they weren't sure yet whether these machines will take bills, which I assume is money of the crown. And it's been mentioned here that it would be a credit system where I assume you buy something from a cashier and it somehow activates the machine with the amount of money I have in it. Where does that difference lie? Are we looking at machines that will actually take either coins or paper bills?

Ms Kirk: The terminals that are ultimately selected — and there may be a variety of types that are ultimately selected — will have to fit within the definition of video lottery terminals that is in Bill 75. It's important then to read that definition carefully. It has two components. It talks about a scheme upon payment of money — and as we know, money can be in a variety of forms: It could be a bill, it could be a coin, it could be a credit — but that the play may result in the receipt of a credit. It doesn't use the word "money" in the receipt aspect. As indicated, that is what distinguishes a video lottery terminal from what's commonly called a slot machine. Slot machines result in the payment of money to the player; video lottery terminals result in the payment of credit, and the credit can ultimately be redeemed.

Mr Crozier: So you put money in a slot machine and you either win or lose.

Ms Kirk: Yes.

Mr Crozier: In a video lottery terminal, can I not only build up a credit, but build up a debit?

Ms Kirk: I would imagine that would be possible. I really am not an expert in that field except that the definition in the statute talks about resulting in —

Mr Jim Flaherty (Durham Centre): No. The answer is no.

Interjections.

Mr Crozier: Sorry, but I'm asking the expert.

Mr David Ramsay (Timiskaming): You wouldn't want a debit, would you?

Ms Kirk: Again, we're not here to provide expertise on gaming machinery; we are here and we're happy to elaborate on the definition in the act, and the definition talks about receipt of a credit.

Mr Crozier: But it doesn't talk about a debit.

Ms Kirk: It doesn't talk about a debit.

Mr Crozier: So it wouldn't be allowed?

Ms Kirk: I would have to consider whether a debit would come within the definition of a credit. I think the distinction in the definition is between receipt of a credit as opposed to receipt of money.

Mr Crozier: In your expert opinion — and this is a technical briefing; therefore I would have expected that some of these things could have been answered — would that be something that you think this committee should consider amending in the legislation so that is more clear?

Ms Kirk: I think, personally, the definition is quite clear, and operational decisions will have to be made that are in keeping with the legal definition, the statutory definition.

Mr Crozier: As I said earlier today, to me these machines are more terrible than slot machines then, because at least a slot machine, if I put a dollar in it,

that's all I can lose at that point. If this allows for not only building up a credit that I can gamble away almost instantly but allows that I can go into debt and have to settle before I leave the place —

Mr Flaherty: It doesn't.

Mr Crozier: Well, you may sit there and say that it doesn't allow it. I would prefer that somebody with the legal expertise will tell me that it does not allow it. If it doesn't allow it, that's fine. If there is a grey area, all I'm suggesting is that this is something we perhaps should look at.

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Ms Kirk: I think the answer to your question is that the statutory definition says very clearly that the playing will result in the receipt of a credit. I think other members who have more experience with the machinery are putting forward their views that it cannot be a deficit.

Mr Crozier: But there's no guarantee that it will result in a credit.

Ms Kirk: Again, those are operational decisions that will be for others to make.

Mr Crozier: But the point is that, like slot machines, you can lose money. There's no question about that, is there?

Ms Kirk: I really do not know the answer to that question.

Mr McCallum: The nature of the undertaking is to play a game and you have an opportunity to win and an opportunity to lose, so certainly, yes, in that sense.

Mr Crozier: And because there's quite a sensitivity about comparing video lottery terminals to slot machines, are you able to offer a technical difference as to whether you can gamble at a greater speed on a video lottery terminal than you can on a slot machine?

Ms Kirk: No, I think the speed at which a game is played would depend very much on the player.

Mr Crozier: Well, perhaps that's something we may be able to get from some witnesses who will appear before us.

Mr Kennedy: In the same vein, is there anything that prevents a slot machine from being designated as a lottery scheme?

Ms Kirk: A slot machine would not come within the definition of video lottery terminal, so —

Mr Kennedy: No. What I'm asking is, the video lottery terminal in this act is proposed to be designated "a lottery scheme." Is there anything that would prevent a slot machine from being also so designated if the government chose?

Ms Kirk: No, video lottery terminals are the instruments by which video lotteries are carried out.

Mr Kennedy: I'm sorry. I really need an answer to the question. If I understand correctly, and please correct me if I don't, the video lottery terminals are being designated, by definition, as a lottery scheme so that they are in compliance with the Criminal Code. Is that correct?

Mr McCallum: They are a subset. "Lottery scheme" is already defined in the Ontario Lottery Corporation Act, defined as follows: "includes a lottery, a game of chance and a game of mixed chance and skill."

Mr Kennedy: So would a slot machine fit under that definition if the government so chose?

Mr McCallum: Just let me think about it, because I've never thought about whether a slot machine fit the definition of lottery scheme.

Ms Kirk: With due respect, it's really a hypothetical question. Bill 75 introduces video lotteries as a means of gaming in the province, and the means by which one would participate in a video lottery is through a video lottery terminal. That's what Bill 75 addresses. I think your question is really hypothetical in nature, which is, could video lotteries be carried out by some other form of machinery which is not included in Bill 75? I think the answer is that Bill 75 does not address that, and that's a hypothetical question.

Mr Kennedy: I'm sorry, but with respect, the question was: Could slot machines, under a different act —

Interjection.

Mr Flaherty: On a point of order, Mr Chair: Bill 75 is the bill we're studying here. It's not some other bill that might be brought some day by some government about something else.

Mr Kennedy: Mr Chair, my point is technical in nature, and it —

Mr Flaherty: Your point is irrelevant to the matter before the committee.

Mr Kennedy: Well, Mr Chairman, is it the advice —

The Chair: Are you asking simply whether or not the government under Bill 75 could introduce slot machines? Is that the question? That's quite relevant.

Mr Kennedy: Mr Chair, for definitional purposes only and for the technical staff we have in the room currently, I'm asking whether this particular clause which defines video lottery terminals as a lottery scheme could, so that we know the scope of the provision that exists, also include something like a slot machine.

Ms Kirk: The answer is clearly no. If you read the definition of "video lottery," you'll see that it is a lottery scheme that is "operated on or through a video lottery terminal," period.

Mr Kennedy: But if the operative part is designated as a lottery scheme — that is the only part I'm asking, Mr Chair. The definition of a lottery scheme as was read out, if I understand correctly, includes any gaming device and therefore could include — could I have that definition read again? Just a single point, Mr Chair.

The Chair: That may be, but your time is up. We can deal with it that way. However, the subcommittee has allocated an additional 55 minutes today, and if you wish to take advantage of it, you can so choose. Next in rotation would be Mr Kormos.

Mr Kormos: Chair, I am prepared to move that we terminate this stage of the hearing process. Again, not to in any way diminish these people in their capacity, but clearly they have had exposure and involvement in such a narrow part of this development. You'll note that the minister earlier said, "Ask the technical questions to the staff, the ones I can't answer." It's not their fault, but they weren't armed with the information either. Clearly, nobody knows, so I have no more questions to ask of these people.

The Chair: Thank you, Mr Kormos. I assume there are no questions there. Is it in order to adjourn the deliberations today?

Mr Kennedy: Mr Chair, I don't wish to belabour this, but I would like, with your concurrence, to rephrase the single question I asked before and use just that amount of time.

The Chair: Okay. I have to hear the question first.

Mr Kennedy: The question on which I would like your technical opinion only is the nature of the definition in the legislation which designates and defines a video lottery terminal and a video lottery as a "lottery scheme." We are asked at different points here to consider whether there is a true distinction between a video lottery terminal and a slot machine, and what I'm asking is, should the government in its wisdom have chosen other gaming devices, could they also be designated as lottery schemes? I'm just asking for your technical definition of that.

Mr Flaherty: On a point of order, Chair, if I may: Again it's a hypothetical question. It's asking whether any government, this government, some day, some time, could bring forward another piece of legislation dealing with another subject. It's not a matter before the committee, and I ask that you rule the question out of order.

The Chair: I don't think that was the question. As I understand the question of Mr Kennedy, it's simply, if the government chose, could it designate other gaming machines, including slot machines, a lottery scheme? The question is for a legal opinion, because obviously the government could designate anything, could designate any scheme. The question is whether that would be legal under the terms of the Criminal Code.

Ms Kirk: I can provide the committee with our legal opinion on that. You'll note that it's — and pardon the legal vernacular — what we call a conjunctive definition. There's an "and" in the middle of it, which means there are two components in the definition that have to be met. The first is that it's a lottery scheme, and second, it shall be "operated on or through a video lottery terminal." With respect, you're focusing on the first aspect of the definition only, the lottery scheme, and assuming that brings you into the broader definition under the Ontario Lottery Corporation Act. You're right, it does, but you've forgotten the second half of the equation, which is the conjunctive part, the second requirement, that it shall be operated by a VLT, and a VLT is defined in the act in the way we've talked about.

Mr Kennedy: But it's not my inference that the government would move to define a slot machine as a VLT, simply that for the purposes of these hearings and us discussing the subject with the public, a gaming device is a gaming device, a slot machine and a VLT are in effect very similar things, and what we're looking at is that a legal distinction is made here for the purposes of enabling —

The Chair: Excuse me, Mr Kennedy. Now we're getting into argument. I think the staff have answered the question you've posed to the best of their ability. If there is no objection, I declare this meeting adjourned until tomorrow morning at 9:20. Don't forget to bring your bags tomorrow if you're leaving for Thunder Bay. I need the subcommittee, Mr Flaherty, Mr Ramsay and Mr Kormos, to remain.

The committee adjourned at 1610.

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Substitutions present / Membres remplaçants présents:

Ms Isabel Bassett (St Andrew-St Patrick PC) for Mr Doyle
Mr Bruce Crozier (Essex South / -Sud L) for Mr Chiarelli
Mr Jim Flaherty (Durham Centre / -Centre PC) for Mr Tilson
Mr Gerard Kennedy (York South / -Sud L) for Mr Conway
Mr Peter Kormos (Welland-Thorold ND) for Mr Hampton
Mr E. J. Douglas Rollins (Quinte PC) for Mr Leadston
Mr Terence H. Young (Halton Centre / -Centre PC) for Mr Parker

Also taking part / Autres participants et participantes:

Douglas B. Ford (Etobicoke-Humber PC)

Clerk / Greffière: Ms Donna Bryce

Staff / Personnel: Mr Andrew McNaught, research officer, Legislative Research Service



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Standing committee on administration of justice

Alcohol, Gaming and Charity Funding
Public Interest Act, 1996

Comité permanent de l'administration de la justice

Loi de 1996 régissant les alcools,
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LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Wednesday 7 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO
COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Mercredi 7 août 1996

The committee met at 0920 in room 151.

ALCOHOL, GAMING AND CHARITY
FUNDING PUBLIC INTEREST ACT, 1996
LOI DE 1996 RÉGISSANT
LES ALCOOLS, LES JEUX
ET LE FINANCEMENT
DES ORGANISMES DE BIENFAISANCE
DANS L'INTÉRÊT PUBLIC

Consideration of Bill 75, An Act to regulate alcohol and gaming in the public interest, to fund charities through the responsible management of video lotteries and to amend certain statutes related to liquor and gaming / *Projet de loi 75, Loi réglementant les alcools et les jeux dans l'intérêt public, prévoyant le financement des organismes de bienfaisance grâce à la gestion responsable des loteries vidéo et modifiant des lois en ce qui a trait aux alcools et aux jeux.*

ADDICTION RESEARCH FOUNDATION

The Chair (Mr Gerry Martiniuk): Good morning, ladies and gentlemen of the committee. I see a quorum. I hope everyone who is proceeding to Thunder Bay later in the day has brought their bags this morning, which you will need in the afternoon.

Our first presenter is the Mississauga Newnorth Gymnastics Club, but it would seem they're not here. Fortunately, Dr Robin Room of the Addiction Research Foundation is present. Dr Room, could we proceed with you? Please sit down. You're the vice-president of research, I understand, of the Addiction Research Foundation of Ontario. We have 20 minutes. Please proceed.

Dr Robin Room: Thank you for this opportunity to comment on Bill 75. I've already been introduced.

The Addiction Research Foundation is a knowledge-based organization engaged in research, treatment, education and programs, with the primary mission of working with others to prevent and reduce the harm associated with alcohol, tobacco and other drugs in Ontario communities. We are also authorized by our board to work on gambling problems as support allows and as compatible with our primary mission.

My testimony today is from the perspective of a public health agency with specific responsibilities for reducing harm in the area covered by Bill 75. My suggestions will focus on specific aspects of the bill, but the foundation's overall concerns about alcohol and gambling problems are shared by many others in the public health field.

Bill 75 concerns the regulation of two popular commodities: alcoholic beverages and gambling. Both are sources of substantial revenues for the province, and a

primary purpose of Bill 75 and the acts it amends is to ensure that revenue flows to the province effectively and without corruption. Alcohol and gambling are also sources of pleasure to many people in the province. The province can derive substantial revenues from these commodities, in fact, precisely because people are willing to pay substantially more than the cost of production and distribution for these pleasures.

Both commodities, of course, also bring pain and harm to many people in Ontario. In conjunction with the Canadian Centre on Substance Abuse, the Addiction Research Foundation recently carried out a study of the economic costs of alcohol-related problems in the province. The study was conducted with state-of-the-art methodologies, applied conservatively. The estimated cost to society of alcohol-related problems in Ontario for the year 1992 was \$2.9 billion. This is about twice the total revenue to the province from alcohol sales.

This cost estimate includes health costs and conservative estimates of policing costs and productivity costs, but it by no means includes all the harm from drinking. Behaviours related to drinking — not only drinking-driving and alcohol-related violence but also less dramatic and more everyday behaviours — have a devastating effect on many families in Ontario. In a survey conducted last year by the Addiction Research Foundation, 9% of all Ontario adults reported that their own drinking had had a harmful effect on their home life or marriage at some time, and 3% reported such a harmful effect within the last year. Similar or higher percentages reported that their own drinking had harmed each of four other important life areas: their friendships or social life; their work, studies or employment opportunities; their physical health; and their financial position. From another perspective, one quarter of all Ontario adults report that in the past year a member of their family or a friend had had a problem with drinking.

We presently have no estimates to match the ones I gave you for alcohol of the economic costs to society of problematic gambling, but we do have data on the harmful effects of gambling on these life areas from a 1994 survey: 4% of Ontario adults reported harm to their family's financial position from their own gambling in the previous 12 months and about 1% reported problems in each of the other life areas: their home life or marriage; their friendships or social life; their work, studies or employment opportunities; and their physical health.

These data underscore the fact that both alcohol and gambling behaviours have externalities, as economists would term them; that is, in addition to the potential pleasure or pain for the drinker or the gambler, there is also much potential for harm to others.

It is largely for this reason that both alcohol and gambling have in the past been the subjects of stringent and indeed swingeing legislation by the province. The sale of alcoholic beverages was totally prohibited for several years in the 1920s and most forms of gambling were prohibited for many decades. For both commodities, the eventual decision by the province was against prohibition and instead the province eventually adopted for each commodity a strong control system, involving a combination of provincial operation of production or sales and a well-enforced licensing system for private retailers.

Ontario still has some elements of a strong control system for alcoholic beverages, but over the decades the alcohol control system has been considerably loosened by successive governmental decisions. In these decisions, the convenience of the drinker and the interests of those involved in the industry have often been stronger considerations than the countervailing interests of public health and public order.

At the technical level, we may cite two reasons for this: that there has not been a clear and explicit standard in the legislation defining the public interest in terms of the reduction of alcohol-related problems and that the ministries responsible for dealing with the problems from drinking — for instance, the Ministry of Health and the Ministry of the Solicitor General — have no formal role in the regulatory process. The same point applies to legislation on control of gambling.

This brings me to my first recommendation. Bill 75 does not include in its language any guidance as to the purpose of the regulatory machinery for which it provides. An answer should be given to the question the bill invites: Why is the province interfering so forcefully in the free market for these two commodities? My suggestion would be that subsection 3(3) of the bill should be amended to remedy this, so that it reads as follows.

First, the existing sentence: "The commission shall exercise its powers and duties in the public interest and in accordance with the principles of honesty, integrity and social responsibility."

Then the second sentence: "The primary public interest with respect to alcohol and gaming is to manage sales in the province in such a way as to reduce and hold to a minimum all harms to health, safety and work and family life as a consequence of consuming alcoholic beverages or engaging in gambling."

The second point to make concerning the bill is that it might be literally described as enabling legislation. It considerably increases the latitude for any future government to make substantial changes in both the alcohol control and gaming control systems without further recourse to the Legislature. The extent to which it continues down the path of turning alcohol and gaming controls into a matter of governmental decision rather than legislative action is illustrated by the fact that many of the major initiatives in the ministerial announcements of June 13 concerning the legislation are nowhere spelled out in the act.

There is no provision in the bill concerning a "comprehensive strategy of research, public awareness and treatment to deal with problem gambling," to quote from the press package at the time of the announcements.

Instead, there is only a provision that video lottery proceeds may be paid out as the government of the day may direct. The restrictive guidelines which have been announced on the location and number of video terminals in the province are a matter of government policy rather than being spelled out in the legislation.

0930

The subsections which provide that powers and duties may be transferred from the Liquor Control Board of Ontario to the new commission do not in any way restrict the nature or extent of such transfers. This ambiguity opens the possibility that some future government could use these provisions to eliminate the LCBO in all but name without further recourse to the Legislature. This is a major concern, because the LCBO is an important partner with other agencies in controlling alcohol sales and promoting the wise use of alcohol.

In principle, the bill thus opens up alcohol and gaming controls, areas with substantial public interests at stake, to unforeseeable actions by future governments for which there would little immediate accountability. The committee may wish to consider whether it would be in the public interest to amend the bill so that important substantive aspects of the alcohol control systems and the gambling control systems, aspects which potentially affect the rates of harm from drinking or from gambling, cannot be altered or eliminated without further legislative action.

The third point which I wish to make concerns the issue of the division or combination of functions in government regulatory bodies. Both those concerned about alcohol problems and those concerned about problems from gambling may well worry that combining the regulatory agencies will dilute the attention to each problem. This need not happen with proper staffing levels and organization and appropriate regulatory provisions, but it will be a matter for watchful concern in the coming years. The LLBO is already overburdened in terms of its regulatory responsibilities.

On the other hand, I'd point out that the approach of Bill 75 might well be pushed further. The functions of the Ontario Racing Commission with respect to the regulation of gambling, for example, could be brought into the new commission. In addition, the government's perceptions of "a potential conflict of interest" between sales functions and the regulatory functions of the LCBO, as described in a recent news release, potentially applies also to the Ontario Casino Corp and the Ontario Lottery Corp. The regulatory functions of these two gambling corporations could also be transferred to the new commission.

A further suggestion in the interests of public health would be to consider bringing sales of tobacco, another legal commodity with great potential for harm to health, within the jurisdiction of the new commission. A system to license sellers of tobacco parallel to those for alcohol and gambling has the potential to reduce sales to minors and to reduce opportunities for illegal untaxed tobacco products to be sold in stores.

Lastly, a couple of specific points. The provision for the potential allocation of revenues from video lotteries, which the government has put forward to support the establishment and operations of a comprehensive gamb-

ling strategy, might appropriately be expanded so the burden is shared among all modes of gambling, and parallel provision might be made for support for a comprehensive strategy to deal with alcohol problems.

Also, an amendment to Bill 75 could stop a new and unrecognized erosion of the provincial alcohol control structure. A recent review of unrecorded alcohol consumption in Ontario using three sources of estimation found that beer from you-brews and wine from you-vints account for between 2.5 million and 3 million litres of pure alcohol consumed in the province, or about 5% of the recorded alcohol consumption in the province.

It's clear that this segment of the alcohol market is not under effective controls. The number of you-brews and you-vints advertising in the yellow pages exceeds the number which are paying the provincial tax on their products. Many outlets have progressively reduced the effort required by the customer to make the beer or wine so that the distinction from a wine or beer store has become smaller, and there's reason to believe that underage customers are not effectively screened. To avoid a further erosion of the control system, we believe that the you-brews and you-vints should be brought unambiguously under the jurisdiction and control of the Alcohol and Gaming Commission.

Again, I thank you for the opportunity to discuss this bill. In the coming days, as you hear testimony from a variety of parties and consider possible amendments to the bill, I would urge you to keep a focus on attuning the legislation to the purpose for which alcohol and gambling controls exist: not only to secure provincial revenue and to provide for an orderly market, but also to reduce to a minimum the very substantial health and social costs which alcohol consumption and gambling entail.

The Chair: Thank you, Dr Room. We have approximately two minutes of questions for each caucus.

Mr Peter Kormos (Welland-Thorold): The province is proposing 20,000 slot machines throughout the province. That translates to one slot machine for every 550 population. I come from small-community Ontario —

Mr Jim Flaherty (Durham Centre): On a point of order, Mr Chair: Mr Kormos is referring to slot machines. There are no slot machines in Bill 75.

Mr Kormos: Cut the crap.

Mr Flaherty: The definition —

Mr Kormos: I come from small-town Ontario, Welland, which has a population of 48,000 people.

Mr Flaherty: Calling them slot machines is inaccurate.

The Chair: Please proceed.

Mr Kormos: At one slot for every 550 in the population, that means 87 slot machines in a small-town community like Welland. That's an incredible exposure.

People like Mark Griffiths from the University of Exeter have done a lot of research about slots as being the most addictive form of gambling, as being the entry point, especially for adolescents, and especially now the electronic slots and the way they are akin to video games. Research has been done into the addictiveness of video games.

I appreciate you're talking about a regulatory body and the need to give it the tools to properly regulate. Should we even be considering introducing slots at the rate of

one for every 550 population in view of the incredible strength of the research that indicates they're incredibly addictive and that they draw people who might otherwise not be drawn into gambling regimes? They draw people into gambling lifestyles. Shouldn't we be rejecting the proposition of slots?

Dr Room: The province, in common with many North American jurisdictions, has been increasing the availability of gambling in general. The research that's been done on the video machines has primarily been done in Britain where there are no effective age controls on access to them. That's been the focus of the literature in Britain. I guess this is a decision essentially for the polity to make about how much gambling they want to have, how much available in the province. From my point of view as a researcher, I would focus on the availability of gambling as a whole. This is one more form of availability, but it's already possible to gamble in any town in Ontario in a number of different ways.

Mr Kormos: Should we be increasing the access to it? That's the real question.

The Chair: Thank you, Mr Kormos. Mr Flaherty. We do have a plane to catch today, gentlemen. If I'm perceived rude, I don't mean to be; however, we do have a timetable.

Mr Flaherty: I take it, sir, your statement about the province increasing the availability of gambling doesn't take into account the illegal gambling of which we're aware. You are aware of the existence of 15,000 to 20,000 illegal VLs in Ontario today?

Dr Room: Yes. I'm not personally —

Mr Flaherty: So the reality is we have these machines in operation today where persons acting illegally are profiting from people in the province of Ontario. Correct? My point is, we have to face up to the reality, don't we, of the existence of this social phenomenon that some people do enjoy this form of entertainment. In that regard, I want to ask you about the level of funding that you view as sufficient in terms of dealing with alcohol and gambling addiction difficulties in Ontario. What has been your experience that way?

Dr Room: We have an alcohol and drug treatment system in Ontario that I think is very cost-effective in comparison to other jurisdictions. Someone from Sweden, for instance, made the calculation that they have about the same population, about the same level of alcohol and drug problems, and spend about six times as much per capita on their treatment system. It's a stretched system already. The tendency is to talk in terms of treatment of gambling problems being added to the duties of that system. I think there will be a need for an allotment of extra resources for them to take on that task.

Mr Flaherty: You're aware of the commitment on the part of the government to contribute 2% of the gross revenues towards this addiction, towards the education and treatment?

Dr Room: Yes, I'm aware of that. That certainly is a good start. We can only work in sort of rules of thumb until we've actually got more experience with the system, but that certainly is a good start on provision of the extra resources that are needed for gambling.

Mr Bruce Crozier (Essex South): Thank you, Mr Room. You've given us some good information and some

good comments, so in the very short time we're given I don't want to dwell on those. I do want to give you an opportunity, though, to point out what I perceive as the position of the Addiction Research Foundation — if you agree with me, you may want to elaborate — that is that you're not here to have everything eliminated, but you serve a much better purpose than that. Could you define it for us, because some people think that you're against gambling, you're against alcohol, and that's not the case.

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Dr Room: No. First of all, we're an agency of the province of Ontario. We accept that it's properly a policy decision by the people and by the Legislature about the availability and the degree of availability of alcohol, and gambling for that matter. Our efforts are devoted to reducing the harm that goes along with that availability. We are in no way arguing that there should be a great change towards greater restriction in these areas; we're arguing to you that we need to face up to the fact that there are problems associated with both of these commodities and that the control system actually has a function in holding down the level of those problems. The control system itself is not sufficient to deal with alcohol or gambling problems, as we were just discussing in this colloquy, but it is an important component of the public health approach to these issues.

Mr Crozier: Therefore, if you were to warn the government about some of the very harmful aspects of this type of gambling — and I'll still continue to call them slots because I think people understand what we're talking about when we say "slots." I'll give you an example. We say saw-horses in the carpentry business. We don't call them fixtures for holding wood on which to cut. People understand some of these things. All we're trying to do is use a term that everybody understands. Would you think the public understands what a slot machine is?

Dr Room: I expect so, but I have no data on that.

The Chair: Thank you, Dr Room, for your very thoughtful presentation.

Dr Room: Could I just add that we asked Professor Urspruch from the faculty of law at the University of Western Ontario to give a commentary. It has some technical points that the committee may wish to take into consideration, so I'm leaving it with the committee.

The Chair: Yes, we have that. Thank you very much indeed.

Mr Kormos: If I might, Chair, while we're waiting for our next presenters to seat themselves, here we are on day two. I anticipate that we have very limited time as often as not to interact, exchange questions and answers with presenters in view of the tight time frames.

The Chair: That's correct.

Mr Kormos: I acknowledge and understand the tactic of raising points of order while somebody is attempting to utilize their time in the way they best see fit as a way of reducing the time available to them. In fact, I am probably as good at it as anybody else is. I would please, Chair, call upon you to show some leadership to control that sort of stuff. I know how the game is played. If people want to play that game, by God, I'll play it, but I'd rather the government —

The Chair: Thank you, Mr Kormos. If the right becomes abused, I will certainly correct it.

BREAK OPEN TICKET PROGRAM MANAGEMENT ALLIANCE

The Chair: Our next presentation is from the Break Open Ticket Program. Could you please identify yourself for the purpose of Hansard and then proceed.

Mr Ron Callaghan: Good morning. My name is Ron Callaghan and I'm the current president of the Break Open Ticket Program Management Alliance. With me is Mr Terry Sisson, the past president, and Mr Craig Hurst, another past president of the organization.

It's an industry organization that represents 32 Ontario companies that provide products and services to Ontario charities, raising funds through the sale of break-open or Nevada tickets. For those of you who are unfamiliar with Nevada tickets, they're a form of charitable gaming lottery which has been permitted in the province since the 1970s.

Nevada tickets are sold in many types of locations. They were originally in non-profit clubs such as the Royal Canadian Legion and other facilities owned by a charitable or non-profit organization for the purposes of supporting community and charitable activities. In 1987, the Minister of Consumer and Commercial Relations further permitted the sale of Nevada tickets in third-party locations such as convenience stores and liquor-licensed establishments. This action was taken in order to allow a greater number of charitable and non-profit associations to benefit from this gaming activity.

A tremendous expansion in the break-open ticket market took place between 1990 and 1995 as thousands of retailers, under regulation of the Gaming Control Commission, began to support community organizations by providing retailing opportunities for these publicly demanded lottery tickets.

Today Nevada tickets generate an estimated \$1.3 billion in sales, with \$960 million paid out in prizes to the players, at least \$200 million going to charities and non-profit groups to support their causes, approximately \$28 million to municipalities and the provincial government in the form of licence fees, and approximately \$112 million going to the retail and commercial sectors for their support of this activity. This economic activity supports thousands of jobs in the charitable, government and commercial sectors of the Ontario economy.

The budget put forward by the Ontario government on May 7 outlined a three-stage implantation of video lottery terminals in the province. Phase 1 would see their introduction at racetracks, phase 2 at charity casinos and phase 3 would further the expansion of video lottery terminals by introducing them to liquor-licensed establishments across the province.

The Break Open Ticket Program Management Alliance is adamantly opposed to the introduction of video lottery terminals, but most particularly to the phase 3 implementation. The impact of phase 3 will be devastating to our industry and will cause a negative impact on related industries, but first and foremost will cause tremendous financial hardship on the charities and non-profit organiz-

ations we represent. Losses to these community associations will mean a reduction in community support services they provide. Experience in other jurisdictions indicates that the introduction of video lottery terminals to licensed establishments has impacted Nevada sales by up to 60% in some areas.

We'll look at a breakdown of Nevada sales and the impact on each sector. We'll be conservative and take a look at just a 40% drop in sales. Current sales are around 1.2 million units per year, but we'll be conservative and just look at one million units per year.

Each unit or deal contains 2,184 tickets selling at 50 cents each, producing a total of \$1,092. Prizes of \$800 per deal leave a gross profit of \$292, a 73% payout.

Deductions from gross profit:

First is licence fees of 3%, or \$24 per box, revenue to provincial and municipal governments totalling approximately \$24 million. A 40% reduction would mean a loss of \$9.6 million from government coffers. I know that many municipal governments factor this income into their budget calculations. Municipalities which are already facing cutbacks from transfer payments and tax losses due to high unemployment can ill afford another cutback.

Sales commissions and allowances paid to retailers and club sellers are to a maximum of 5% or \$54.60 per unit, or \$54.6 million. Reductions here would amount to close to \$22 million. This reduction will most certainly create job losses in the retail sector.

Product sales of up to 4.5%, or \$48 million: This accounts for a large number of jobs in the manufacturing sector as well as the gaming equipment supplier and distributor sector. In fact, market pressures and competition keep costs well below this maximum, which creates more funds for the charities. A 40% reduction in this would be \$19.6 million.

Management or service fees of up to 4%, or \$43 million: 40% of that costs \$17 million. A complete industry has been created in the last few years, creating employment for over 1,000 people in this sector.

This is another sector which does not always collect the whole 4% fee because of market pressures and also because many licensees sell their own Nevadas and manage their own programs. For example, approximately 80% of my sales represent self-managed groups.

The resultant net to charity: Although the minimum net to charity is \$120.58 per box or \$120 million a year, reduced expenses as previously mentioned probably mean the realistic net to charities is closer to \$200 million per year — a 40% loss meaning a reduction of \$80 million to the charities and non-profit organization in your communities.

A large portion of our clients are charitable and non-profit organizations which rely almost entirely on the sale of Nevada tickets to fund the programs that are so necessary in our communities today. Many have already suffered due to government funding cutbacks and would be devastated by a loss of 40% to 60%.

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Let's review these potential losses based on conservative estimates of a million boxes and a 40% reduction: licence fees of \$9.6 million, retailer commissions of \$21 million, product cost to equipment suppliers and manu-

facturers of \$19 million, management fees payable to gaming service suppliers of \$17 million — a total loss of \$68 million — and a minimum loss to charities in Ontario of \$120 million. This does not even mention or take into account volunteer hours donated by community-minded citizens dedicated to their cause. Thousands of volunteers spend time each year managing Nevada programs in order to maximize profits for their charities. The break-open ticket industry and the charities of Ontario cannot afford any loss of this kind, especially in today's economy.

It is estimated that each video lottery terminal will take approximately \$25,000 a year from a community. If a small community has 20 machines, its economy will lose approximately \$500,000 per year. Think of each of the small communities in your ridings. This means \$500,000 will not be spent on local goods and services. How many people will lose their jobs because of that decreasing economy? Ten thousand machines will remove \$250 million; 20,000 machines, \$500 million. Ontario cannot afford these losses. Considering what's happening in Alberta, where the provincial government is taking a long look at the impact of moving too quickly on video lottery terminals, perhaps the Ontario government would be wise to heed its warning.

The hospitality industry claims to create thousands of jobs with the introduction of video lottery terminals. What will these people be doing? How many people does it take to serve a person sitting on a stool stuffing coins into a machine?

In closing, we urge you to closely examine the impact of phase 3 of the introduction of video lottery terminals in your communities. You will most certainly realize that Ontario communities will be best served by not allowing video lottery terminals into licensed establishments.

Mr Flaherty: Mr Callaghan, thank you for coming today. I gather that your concern is really a concern related to market share for Nevada tickets and break-out tickets and the preservation of that market share for the benefit of the charities that do benefit from those sales. Is that fair enough?

Mr Callaghan: That would be fair.

Mr Flaherty: The intention of the government, as I'm sure you're aware, is to take a controlled, staged approach — you've referred to stage 3 — so that with the introduction of video lotteries, one would first see the racetracks and the charity gaming halls, and then have an opportunity to analyse that impact. Is that an approach with which you agree?

Mr Callaghan: Yes, we would agree with that.

Mr Craig Hurst: To the extent that there's a need to support certain types of gaming activities in the province, we have no opposition to the introduction of video lottery terminals to racetracks and other established gambling locations.

Mr Flaherty: If we look at the overall concern, I'm sure you'll agree with me that your concern and the concern of all those involved in raising money for charities is to increase the funding for the charities in the province. This legislation has the commitment of the government to increase that funding by up to \$180

million, and I'm sure that's a goal with which you would agree.

Mr Hurst: That would be an agreeable goal if indeed there was a guideline in place that was understandable in terms of how those dollars were to be divided among the charitable organizations currently receiving gaming funds.

Mr Flaherty: I understand your concern. Your concern is more along the lines of how this is to be implemented to make sure there's fairness and balance.

Mr Hurst: That's clearly a concern, not only of ours as the commercial side of the industry, but certainly of our charities that we represent as well.

Mr Terence H. Young (Halton Centre): I know a little bit about your industry, because I worked with Crime Stoppers and we did fund-raising through Nevada tickets. I wanted to ask you two questions. Are these assumptions based on video lotteries being placed in the same places that people buy Nevada tickets? That's the first part of the question.

I don't know if you know that the finance minister committed \$180 million — and it's hard to estimate exactly what will come out of it — of new money to charities in Ontario. With your figures you're predicting an \$80-million loss. Why couldn't the new money address the loss in the communities? It's a lot more money.

Mr Hurst: Again, there's not a clear indication as to how those dollars would be allocated. There are some other subsidiary concerns as well. The introduction of video lottery terminals will do considerable damage to the commercial investment that the industry has made, particularly as it has grown rapidly over the course of the last five years. Millions and millions of dollars and thousands of jobs have been invested and created in the province for which there's no clear-cut vision of the future.

Mr David Ramsay (Timiskaming): Thank you for your presentation. I'm very sympathetic to the job loss that's going to happen in your industry and I don't see any replacement, because we were told yesterday that VLTs and slots are not made in Ontario. So whenever this happens, we will have to go out of the province, maybe out of the country, to buy these machines.

What really concerns me, though, and you've mentioned this very well in your presentation, is that with the Nevada-style ticket, what governments in the past have done is given directly to charities the tools to raise their own money. What this government is going to do is make charities dependent upon government handouts again, rather than allow the baseball team, the figure skating club, the Legionnaires, to do the work that they do in the malls and in their organization clubs to raise their own money. It's like a big step backwards. Why take the tool away directly from those groups that are there working with your product and working towards self-sufficiency?

Mr Callaghan: Exactly, and one of our concerns is not necessarily the large, well-known charities, but the small, community-minded charities that are in the small towns out there that are making maybe \$500 a year or \$1,000 a year through the Nevada program that would probably not be available for any money coming down from the video lottery terminals.

Mr Gerard Kennedy (York South): I think people don't realize, as someone who's been involved with a charity that didn't use tickets but knows very well how it operates, that it's a very simple process that exists now. I think what we're looking at are layers and layers of government being added on here. If you look at the path, it goes through the Ontario Lottery Commission, and economic development is involved and so on that will change the whole nature of this. The participatory part also you've mentioned is a loss. In other words, people are involved right now in the community in terms of raising the money.

I wonder if you have any comment about the distinction between the hard gambling — and the gambling industry is known to be represented by slot machines and the electronic versions — versus the softer gambling that is with breakaway tickets, in other words, more restraint that people can exhibit with lottery tickets and breakaway tickets. Do you have a comment about that?

Mr Hurst: Certainly, the indication from Alberta in particular, where a major public inquiry was conducted last year, and work done by Angus Reid, has indicated that the softer forms of charitable gaming and government lotteries are far more acceptable to the public than the electronic form. According to Angus Reid, only 29% of Canadians are in favour of video lottery terminals, and 54% clearly oppose, with the remainder being undecided. I think that spells out the public attitude towards the electronic form of gaming.

Mr Kormos: Hell, Mike Harris was opposed to it until he made his commitment to a tax break for the very rich, which created a revenue problem, so he's got to raise money on the backs of little people now by way of slots.

You make an estimate, gentlemen, of \$25,000 a year being taken from a community for each slot machine. I come from Welland and I represent the communities of Welland and Thorold. Welland has a population of 48,000 people. On the ratio proposed by the government of 20,000 slots for the province, that would mean 87 slot machines in the city of Welland alone. At the rate of a mere \$143 a day in each slot, you're talking about \$1,000 a week from each slot, \$87,000 a week from 87 of them, almost \$500,000 a year from a small community like Welland, already facing desperate levels of unemployment.

That's almost \$500,000 a year that ain't being spent in supermarkets, that's not being spent in shoe stores, that's not being spent on household supplies, that's not being spent on clothing for your kids. We're talking far bigger bucks. I appreciate your efforts to estimate this, but my anticipation and our growing familiarity with the insidious addictiveness of slots indicates that we're talking about sucking far more than \$25,000 a year per machine from each community. We're talking about crippling a whole lot of small business people, along with fund-raisers like yourself, by virtue of the money that the slots are going to suck out of the pockets of hard-pressed people in communities like Welland and Thorold and across this province.

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Mr Hurst: Those numbers do not reflect the loss of licensing revenues being paid to the municipalities at the rate of \$24 million a year either.

Mr Callaghan: The other comment I would make is that I've done some reading on what's happened in Alberta, and to my knowledge there has been no one who has robbed \$100,000 from their company to play Nevada tickets, as an illustration.

The Chair: Thank you very much, Mr Callaghan and your associates. Did you mention when Nevada tickets were introduced?

Mr Callaghan: In the 1970s.

COUNCIL OF CHRISTIAN REFORMED CHURCHES IN CANADA

The Chair: Our next presenter is the Council of Christian Reformed Churches in Canada, Mr Klein. Welcome, Mr Klein. We have received your written presentation, and you have 20 minutes to make an oral presentation. If you would proceed.

Mr Reinder Klein: Esteemed committee members, I must acknowledge, before I start reading my text, to feeling a little bit out of place as a representative of a Christian group. Churches are also apparently charities, and it seems remarkable to me that we have an opportunity to have some of these VLTs now in our churches and we can benefit from the largess of the general public.

Mr Ramsay: How many do you want?

Mr Klein: On behalf of the Council of Christian Reformed Churches in Canada, representing some 150 congregations in Ontario alone, I thank you for granting us the opportunity for publicly expressing our profound concern about the expected passage of Bill 75. We strongly oppose this bill.

My name is Reinder Klein. I serve the CCRCC as communication associate. It may interest you to know that the Christian Reformed Church is a Protestant denomination in the Presbyterian-Calvinist tradition. Many of our members, though by no means all, trace their roots back to The Netherlands, a nation small in size but large in affection for Canada.

On August 25, 1993, our national council's executive secretary Rev Arie VanEek and I appeared before the standing committee on finance and economic affairs for a hearing on Bill 8. That bill sought to approve the licensing of casinos in Ontario. The brief that we presented at that time included this statement: "We oppose the passage of this bill because we consider the proposed legislation it contains to be morally unconscionable, ethically reprehensible, philosophically indefensible and economically irresponsible." A copy of that brief is attached to some of the briefs that you have before you. With your permission, I would like to read two paragraphs from that earlier brief.

"Gambling," in our view, "be it by way of lottery or casino," or VLTs, "we consider to be an increasing blight in society, a celebration of a way of life that ultimately leads to death, morally and spiritually. This growing preoccupation with gambling we see as symptomatic of the sterile materialism that fuels the rapacious consumerism of our day. For a government blatantly to exploit the common delusion of the quick fix, to base major fiscal policies on a distortion of the truth and to give in to the special-interest groups' selfish demands for a further broadening of the unproductive gambling industry is, in

our view, a cynical miscarriage of public justice. For that reason, we hold that to introduce, support and pass legislation allowing the establishment of" VLTs "in Ontario is morally unconscionable and therefore unacceptable."

Our response to the intent of Bill 75 now under discussion differs little from the thrust of our earlier brief. Consistent with what we said then, we hereby once more express our deep dismay about the government's active and ongoing involvement in the sorry business of gambling. That a conservative administration should introduce legislation aimed at inflicting VLTs on the citizens of Ontario is the more perplexing given the sad and widely published experiences with the pernicious instruments elsewhere.

We see Canada generally and Ontario in particular as extraordinarily blessed. The envy of the world, our great country is rich beyond compare, stable and peaceful as few other nations. Yet our society is undeniably materialistic; its guiding principle appears to be the notion that a person's ultimate worth resides in the abundance of his or her possessions. In such a context aspirations towards financial growth and material security are naturally high, while the influence of moral considerations and of ethical standards would tend to be lower. In consequence, any scheme that holds out the promise of considerable gain against comparatively small expense will have great appeal. Thus it is in Ontario and indeed in many provinces, states and nations.

In everyday life our society is also largely areligious; the predominant allegiance seems to be to the self and to the security of the person. Whatever gods this society might yet choose to serve, the dollar is certainly high on its short list. In consequence, values tend to be flexible and principles remarkably elastic. I don't come here today with vast figures, but I would like to focus on principles and values.

We in the Christian Reformed Church believe in and accept a God-ordained role for governments. We believe that role to be a redemptive and protecting one, a positive influence to establish, maintain and uphold public justice for all with discrimination towards none. For that reason we find it most discouraging that even the governments of Ontario seem quite ready to abandon traditional values and sound principles in favour of mere financial gain and narrow political ends. Indeed, we find it distressing to see our political leaders, whom we honour and wish to respect, choosing in the matter of gambling to be a corrupting influence rather than a protecting and a healing one.

We see our society as richly blessed, yet also as ethically bewildered, morally at sea and politically bereft of abiding principles. Its primary value would appear to be power however defined, as long as it somehow translates into control. The rich here still grow richer, with a little help from friendly governments, at a time when abandoned wretches freeze to death in the streets. While crushing levels of unemployment continue to wreak havoc in the lives of countless thousands, the government cruelly holds out the vain promise of financial salvation by VLT. A Charles Dickens might have called these the best of times, and the worst.

We believe video lotteries to be socially corrosive and highly toxic for several reasons. First, they are highly addictive. In part, this is because their outcome is immediate. Whereas in lottery gambling there is a time lag between a ticket purchase and the announced results, the outcome of a VLT play is instantaneous. This makes another try possible at once, and highly enticing.

Second, their wide and easy accessibility encourages broad participation. This is no doubt the government's intention, the objective clearly being enhancement of its own fiscal situation rather than assisting the general public. However, given the highly addictive nature of video gambling, wide participation is bound to result in extensive and ultimately very expensive levels of addiction.

Third, VLTs are user-friendly. Their considerable allure is hard to resist. Especially with the action occurring strictly between player and screen, external constraints are minimal while the activity itself suppresses ethical and other private considerations.

Fourth, computers appeal to the young. It stands to reason, therefore, that VLTs will sucker-punch especially the upcoming generations. Young adults raised on computer games and arcade activities will quickly be roped into extremely addictive, lose-lose patterns of behaviour.

Fifth, VLTs feed the hunger for quick-fix solutions to complex problems. This can only make citizens even more insistent that governments should provide all the solutions to grave social problems.

Sixth, VLTs democratize gambling. Acting much like financial vacuum cleaners, VLTs indiscriminately nibble at or suck up the disposable earnings of those who cannot afford even to play the casinos. Thus, passage of Bill 75 will ensure that all sectors of Ontario's society, without discrimination in terms of income, bank balance or even geographic location, can be induced to part with some or all of their money, and they will do it in ways that create nothing of value and in an atmosphere of increasing disaffection, frustration and cynicism.

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Seventh, VLTs also denigrate honest work. They do so by encouraging people to consider money a mere plaything while at the same time signalling that money need not be earned through diligence, skill and commitment; just play the VLT game.

In short, we do not see anything positive, constructive or even remotely helpful to the people of Ontario in the proposed introduction of video lotteries. Quite the contrary. We consider the government's participation in gambling, including its involvement in VLTs, to be essentially deceitful and fundamentally unjust, for gamblers invariably lose. The odds are stacked against them. In order to sell such a losing proposition the government has little choice other than to delude its citizens, to dupe them through the false promises of deceptive advertising.

Even Bill 75 itself is misleading. While its stated intent is, in part, "to fund charities through the responsible management of video lotteries," it would take an unusually alert person to find even one reference to charities in the text of the bill. Its title notwithstanding, this bill is

not about funding charities; it is about securing legislative approval for yet another highly questionable way used by the government of Ontario to raise money.

We would make this final observation: Public hearings on contentious pieces of social legislation are being viewed today with growing cynicism. How sincere, one wonders, can a government be in conducting public hearings when some of its own actions appear so disdainful of public opinion? On the other hand, how sound can a government's policies really be when they are shaped according to the passing whims and fancies of the day? Have we arrived at what Jonathan Schell, in the August issue of the *Atlantic Monthly*, calls "hyperdemocracy," which he defines as "a systematized abdication by the élite in obedience to every passing gust of public opinion"?

What does it mean to govern wisely? What of values and moral principles, rooted perhaps in religious belief systems? What indeed of justice? There was a public hearing once, some centuries ago in Jerusalem. A muddled politician named Pontius Pilate found himself in a bind. He let the shouting masses have their way, even though he found no guilt in the bleeding wretch before him. He washed his hands and nailed Christ. That may have been a politically inspired, pragmatic example of Roman conflict management techniques, but it did not serve the cause of justice. It was a cowardly way out.

Will that be your way on Bill 75? Or will you face up to the unpalatable realities and govern justly, for the people's good, if not your own? We plead with you: Do not lead your people into destructive ways. Desperate times may call for desperate measures, but these are hardly such times. Think of the excruciating plight of peoples elsewhere — in Burundi and Rwanda, for example, or in Bosnia. In the light of so much grief and despair, the idea of comfortable Canadians bleakly aspiring to get something for nothing, to get rich quick by irresponsibly playing silly and dangerous games with their abundant possessions seems somehow repulsive, even obscene.

That is why we urge you to withdraw Bill 75 or to seek its defeat in the Legislature. Do it for the people of Ontario, for the people of Canada. Do it for the sake of your own personal and political integrity. Do it for justice. But do it.

Mr Kennedy: Mr Klein, I want to first commend you for the quality and the excellence of your presentation, the obvious preparation and deliberation that you've done in terms of considering this issue. I want to focus on what you're talking about by way of the existence of a public secular morality and how you might characterize for us the type of milestone or the type of step that this type of measure, this type of choice, as you've so clearly outlined, being made by the government on behalf of society represents. I think the temptation for people is to say, "Well, our society is making all kinds of choices that take away from any kind of public morality." I'm wondering if you could tell us what you think the overall consequentialness of this is in terms of the things that are happening publicly.

Mr Klein: Mr Kennedy, I'm really sorry. I'm not sure that I understand your question fully. It's a long question.

Mr Kennedy: I'm really asking how you regard this in terms of the change in public morality as exhibited by governments. How major a consequence do you see with the introduction of VLTs?

Mr Klein: Oh, I see. We consider the introduction of the VLT as the next logical step in a very cynical way of fleecing the public. We consider this to be an exceedingly dishonest way, a manipulative way, an ignoble way. This is not a way for a government to behave. Gambling ultimately costs vast, vast riches in terms not just of money but of social contentment, of all kinds of intangibles. So for a government to focus so specifically and exclusively on raking in money in these subtle and, in our view, dishonest ways sets a tone in the culture that is bleak, that suggests a level of moral bankruptcy that we abhor and that we feel a government may not do. But government needs —

The Chair: Thank you, Mr Kennedy, if we may move on.

Mr Kormos: Mr Klein, I join with my colleague in indicating that I find your submission here to be an enlightened one and one that has a great deal of integrity. I caution you, and I have no doubt that the members of the government caucus will treat you with great kindness here today and great respect, but at the same time I suspect they'll probably dismiss your comments today with a flick of the wrist.

This thing is being so skilfully done. I mean, this is slick. We're talking about a slick operation here; talking about 2% of the proceeds will go to treating gambling addiction where that acknowledges that they're addictive.

Mr Klein: Indeed.

Mr Kormos: It's like telling drug dealers, "Give 5% of your proceeds to addiction programs for drug addicts and we'll let you traffic cocaine and heroin."

The government talks about how they're only putting these slot machines in licensed premises, right? Oh, to control access to the people over 19. Well, most licensed premises in this province now admit people under 19. So the government now says: "But we'll exclude them. We'll put them in a special area." There's more to it than that. You see, the reason casinos serve booze, especially to people who appear to have money and appear to be eager to play, is because a drunk bettor is a far greater sucker, far more susceptible to being fleeced, than is a sober bettor. There's a very special connection between booze and especially this type of gambling, which doesn't require any assessment of the odds or those sorts of things. This is insidious.

Mr Klein: Mr Kormos, with respect, if I may, I'm not here to speak from a partisan political position. I fear that you are playing a kind of opposition game, if I may, with respect.

Mr Kormos: I am very partisan, sir.

Mr Garry J. Guzzo (Ottawa-Rideau): Where do you think he stood in 1993 when you were here?

Interjections.

The Chair: Order, please.

Mr Kormos: Where did I stand?

The Chair: Excuse me. Mr. Klein is speaking.

Interjections.

The Chair: A little courtesy, please, to the presenter, Mr Kormos, please. Mr Klein.

Mr Klein: It is this very, if I may, unprincipled kind of conduct that we must not allow, that we must not accept from our elected political leaders. We are not here to play games, and pardon me if I sound lecturing here or pastoring. I'm not a pastor, I'm a teacher. But there is something far more elevated at stake here. There is something at stake here that has no monetary value. That is the import of our submission. We presented to your government our brief on casinos, so I want to make it very clear that we are here addressing all parties.

Mr Kormos: And I agreed with you then.

Mr Klein: Right on.

The Chair: Thank you, Mr Kormos.

Mr Kormos: I wish these people would agree with you now.

1020

Mr Flaherty: Thank you, sir, for the presentation. One of the issues that was raised yesterday, and the minister, Mr Sterling, responded to a question posed by one of the members opposite, had to do with whether he would play a slot machine or a video terminal or whatever, and he said, well, perhaps it wasn't his favourite form of entertainment.

One of the realities that I guess government has to deal with over many years is that there is not a uniformity of opinion on this issue in our society. There are many who enjoy bingo. Mr Ramsay, the member for Timiskaming, was just supporting break-open tickets and Nevada tickets as opposed to video lotteries when the last witness was here. Mr Kormos's government supported slot machines, which take up more than half our casinos now, and he calls them invidious and something else.

Mr Kormos: Insidious.

Mr Flaherty: He shouldn't be so hard on his own government, his former government, in that way, or on himself.

Mr Kormos: It would be nice to see some of you with the integrity to stand up for what you told your constituents you believed in when you ran for office.

Mr Flaherty: My concern, sir, is entering into a discussion with you on grappling with the obligation of government to deal with the demands placed on government by all of the people in the society and how one grapples with that. If government is to embark on attempting to control gambling within the society, then is it not incumbent on the government to proceed cautiously, in a staged way, to make sure there are controls throughout the process, which is what is contemplated in this type of legislation?

Mr Klein: To be sure, we are not objecting to controls. We don't object to police forces and such. That is not the issue here. The issue is governments seeking to make vast amounts of money in deceitful, dishonest and unacceptable ways, thereby setting the tone for a culture that is already rather bleak and, as you indicate, highly pluralistic.

Your task is awesome and very difficult. I grant you that. But in a pluralistic context, we have not only the right as a church but even the obligation to remind the state of its proper function, which is to uphold, maintain and establish public justice. It is not in the first instance to be in the gambling industry. So we have a real problem with that.

The Chair: Thank you, Mr Klein. You have the last word, and I thank you for your thoughtful presentation and taking the trouble to come before us today.

CLASSIC CANADIAN GROUP

The Chair: Our next presenter is the Classic Canadian Group. Welcome. Could you identify yourself for the purposes of Hansard.

Mr Fernando Di Carlo: Good morning, ladies and gentlemen. My name is Fernando Di Carlo and I am the president of the Classic Canadian Group. With me is Paola Comisso, our national director of sales. We appreciate the opportunity to speak with you regarding Bill 75. Knowing that the time is limited, I will keep my comments brief and leave time to answer any questions you may have.

The Classic Canadian Group is a 100% Canadian-owned, Toronto-based company which supplies gaming machines, roulette wheels and gaming tables and accessories to the gaming industry. Through our gametronics division we are also finalizing the development and manufacturing of a multigame video lottery terminal which goes far above and beyond any VLT currently on the market in terms of value added entertainment. To our knowledge, we are the only Ontario-based manufacturer of VLTs. We know the gaming industry across Canada well and believe we can add our knowledge of it to provide constructive input into the various aspects of gaming in Ontario.

First of all, we support Bill 75. We believe it makes sense to combine the functions of the Liquor Licence Board of Ontario and the Gaming Control Commission into one body. We expect this will help reduce and streamline the regulatory process in Ontario and bring us more in line with the direction being taken by other provinces across the country. As such, we have little concern with the overall direction of the bill. However, I would like to offer a few brief comments on particular sections of Bill 75.

We support the changes to the Gaming Control Act with the addition to section 4 requiring the registration of suppliers of lottery schemes. It will help ensure that only reliable, aboveboard suppliers are selected to provide products to the Ontario Lottery Corp. Given the sensitivity towards gaming in Ontario, we believe this will help lend more legitimacy to the industry.

We are also supportive of the addition of section 8.3 to the Ontario Lottery Corporation Act. We believe that a five-year review will ensure the act remains current with the VLT policy as it is implemented in the province. Up-to-date legislation and regulations are crucial to ensuring a successful industry is developed in Ontario.

Having said that, I would also like to comment on one aspect of gaming in Ontario, and that is the cost of registration for suppliers. In Ontario, the fee for a casino-gaming-related supplier is \$15,000 annually, much higher than the fees in any other province. For example, in the province of Alberta, under the newly constituted Alberta Liquor and Gaming Commission, the registration fee authorizing the applicant to deal in VLTs requires a \$5,000 deposit to conduct a background check. This, in our view, is much more reasonable.

This government has clearly articulated its vision and desire to harmonize with other provinces in terms of regulation and to create an environment which encourages business development and growth of jobs in Ontario. Keeping this in mind, Classic Canadian believes that Ontario's registration fee should be in line with those in the other provinces, if not lower. A new clause should be added to Bill 75 amending the Gaming Control Act to require this, and the cost structure in the regulations should be amended accordingly.

The opportunity exists to develop a new VLT program which provides a unique and value added gaming experience more oriented towards having fun and being entertained than simply winning or losing. As a leader in high technology, Ontario has the ability to demand more from VLT manufacturers and set a new benchmark in the implementation of VLTs.

As I mentioned earlier, Classic Canadian is developing a state-of-the-art multigame video lottery terminal. It is designed to take VLTs to the next level in providing a complete value added entertainment experience and is a product that the gaming public will be excited about. Not only is it fun to play, but we have been successful in sourcing most of our component parts right here in Ontario.

Our meetings with government to date have indicated that the province seems committed to taking a methodical approach to implementation. We strongly support the province's course of action, as the jobs of my employees and those in our supplier companies depend upon the stability of the VLT placement and acceptance. We therefore believe we have a strong stake in how VLTs are implemented in Ontario and would like to show our commitment by offering our assistance as needed.

To accomplish this, we believe the government should pursue three basic principles: The government should support Ontario business by choosing qualified Canadian companies to be the suppliers of VLTs; the VLT program should be developed to promote VLTs from the entertainment aspect and less focused on the gambling aspect; and the government should develop and put in place programs to offset issues such as compulsive gambling and underage gambling.

We believe very strongly in the last point. We are an active member of the Canadian Foundation on Compulsive Gambling, and in fact we were the first VLT manufacturer to commit to devote 2% of our gross sales to the foundation. The foundation works towards prevention and treatment of problem gambling and the implementation of community awareness programs.

Future plans for the foundation include the creation of a toll-free help and information phone line. In light of recent government funding cutbacks in supporting such programs, we believe it is important for industry to step in and fill the void. However, we are pleased that the government will also be devoting 2% of revenues towards problem gambling.

To help the government achieve its goals and objectives in introducing VLTs in Ontario, we believe the government should consider putting in place an advisory board to complement this implementation. In our view, an advisory board of five to eight people with expertise and

representing the lottery and gaming aspects of the industry — possibly including other provincial government lottery corporations with experience in VLTs — financial experts, casino operators, tourism representatives and technical experts would be an excellent source of advice for the government. Whether this is a mandatory board legislated under Bill 75 or organized by the government in advance of developing VLT policy, we believe such a board would be an invaluable resource. I urge you to give it serious consideration.

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The implementation of VLTs in Ontario will permit the government to capitalize on its investment by providing a number of opportunities and benefits to the province by providing a number of opportunities and benefits to the province, including the creation of new, high-tech, direct and indirect jobs, the development of export markets for Ontario-based companies, increased revenue for a variety of Ontario-based companies and the corresponding increase in provincial tax revenue, the development of Ontario-based technology and heightened social acceptance of gaming, which goes hand in hand with the regulation of the industry.

The creation of the Alcohol and Gaming Commission is a good step towards putting in place a responsive, flexible legislative and regulatory framework as gaming becomes more widespread in Ontario. Of course legislation can always be improved, and we encourage the government to ensure that a focus is placed on keeping this legislation and the regulations current with acceptable industry and social practices.

Once again, thank you for the opportunity to speak with you today. I look forward to answering any questions you may have.

Mr Kormos: I have no doubt that you support Bill 75. You're in the business of manufacturing this equipment and there's the potential to put 20,000 of them here in the province of Ontario. When all is said and done, it's a done deal. This committee isn't about to decide whether slots are going to be introduced to Ontario's communities. It's going to happen. So rest assured that that is a done deal. That having been said, yes, when the day is done, I think all of us will be supporting the proposition that if you're going to suffer slots, at least make sure you buy them from here in the province, and whatever modest benefits are going to be derived, let Ontario workers manufacture the darn things.

I read, though, in your background, the addendum to your submission — you talk about providing “a total entertainment experience.” I understand that. I was exposed to the more primitive versions of it, I guess, video games, Pac-man, that sort of thing, as being the genesis as this type of phenomenon, until I realized that, heck, this is somewhat mundane entertainment. But that's individual opinion; I appreciate that. But you talk about the need to create a total experience which is enjoyed by women, men and couples alike, so you do the kind of research that's going to make sure that whatever your machines do draws the broadest range of consumers. That's fair, isn't it?

Mr Di Carlo: Yes.

Mr Kormos: And you talk about the need to make sure you do it without slowing down the game for more

experienced players. The goal in this business is to get as many coins or tokens pumped into that machine in as short an order as possible. Isn't that fair to say?

Mr Di Carlo: I disagree. That line was actually put in because we expect to eventually make a slight modification to our machine to be able to sell it to casinos, as opposed to the VLTs, and that speed is there because casino operators will demand that the game is not slowed down for the entertainment of the player because that's what they like in their casinos, and we can't argue with slot managers.

Mr Kormos: Why would the rationale be different for the 20,000 slots that are being distributed to licensed premises here as compared to casinos? At the end of the day, the operator of that machine wants to maximize profits, right? So the goal is to get as much money pumped into it in as short a time as possible.

Mr Di Carlo: If you were to play our machine and spend \$20, we would want you to walk away from our machine feeling that you were entertained for your \$20 and you didn't lose it, and if instead you won money, then that's a bonus. That's where our philosophy's been since the start of this process.

Mr Kormos: So you want to convince people that spending \$20 and getting nothing in return over the course of, let's say, five minutes was a valuable experience for them and worth that \$20.

Mr Di Carlo: Well, when you go to the movies you don't get anything in return either. You get entertained. Right?

Mr Kormos: You're comparing — well, I suppose Robert De Niro is appropriate. He could probably play Mike Harris in the upcoming movie *The Godfather of Gambling in Ontario*.

Ms Paola Commisso: I think the point here is that gaming is a form of entertainment. We seem to be losing sight of that. It is a choice you make, to go in and play a gaming machine. All the people who play video lottery terminals are not compulsive gamblers. They've made a conscious choice to go in and spend their money on that form of entertainment.

Mr Kormos: But there are higher rates of compulsive gambling with this type of machinery than with any other gambling form, according to the research.

Ms Commisso: There is a rate, that is true, that is a little higher.

Mr Kormos: The most addictive form of gambling.

Ms Commisso: Indeed it is, and we've gone to great lengths to make sure that we are going to address that problem as well. There is compulsive gambling for every type of gambling, not just with video lottery terminals.

Mr Kormos: A higher rate with this machinery than with any other form of gambling. That's why it's called the crack cocaine.

Ms Commisso: I'm not disputing that with you, Mr Kormos. I'm saying that indeed that may be. Video lottery terminals are a form of gambling that is going to have to be addressed, and that is why we work with the Canadian Foundation on Compulsive Gambling here in Ontario.

Mr Flaherty: Just a quick point. We heard this morning from one member opposite that there is no

company in Ontario that can make video lotteries, therefore there would be no jobs created in Ontario.

Mr Kormos: You heard it from the ministry yesterday.

Mr Flaherty: I gather that your company is an Ontario company based here —

Ms Commisso: Yes. We are right up the street, actually.

Mr Flaherty: — and that there are at least one or two other Canadian companies, not in Ontario, that manufacture the —

Ms Commisso: They're component suppliers. They would supply the different components: the monitors, various parts of the machines.

Mr Young: The gaming part of the terminal, how does that work? Mr Kormos was talking about a machine that takes as many coins in five minutes as possible, in a short period of time. We see teenagers playing video games, and a game might last 20 minutes or half an hour. Are you trying to make a machine closer to that? Is that what it is?

Mr Di Carlo: To give you an understanding, what we've done is married two parts of an industry, one the gaming industry and one the travel industry. When you play our game it's actually a travel experience; you get to visit different places and play at different locations and so on. It's really more of a form of entertainment as much as it is a game. We expect that you would have enough enjoyment from the travel and from that whole experience with the surround-sound and things that it doesn't become strictly a box to put coins in.

Mr Young: So it's closer to a computer game or something.

Mr Kormos: "We've taken all your money, now hit the road."

Mr Crozier: Mr Di Carlo, let's assume that the people of Ontario just didn't fall off a turnip wagon. You're trying to convince them that this is an entertainment experience. You said this opportunity exists to provide "a unique and value added gaming experience more oriented toward having fun." Why don't you then try and convince the province that it should put your soon-to-be-developed machine on every street corner and in every bar but not gamble with it; just let people put money in it and have fun? Why wouldn't you do that?

Mr Di Carlo: I guess they could do that. I guess the province has decided to implement a VLT program.

Mr Crozier: Why won't you try to convince them of that?

Mr Di Carlo: They have video games at every corner already.

Mr Crozier: Could it be that if you can gamble on them they'll be played more?

Mr Di Carlo: That's possible.

Mr Crozier: Come on now, give me your professional opinion. Do you think they will be played more if they gamble?

Mr Di Carlo: I don't have numbers from Sega's machines in bars or pinball places, so I really can't tell you.

Mr Crozier: I suggest that if you're an expert in the business and you want to deal with the province, you should have an opinion on that and you should have

some background, because my uneducated opinion, and that's why we're looking toward people like you to advise us, is that if it were merely in a bar for fun, hardly anybody would play it. Let's face it; it's because you can gamble.

Mr Di Carlo: Would you buy lottery tickets for fun?

Mr Crozier: Lottery tickets are totally different. I don't get instant gratification from them. I don't buy them, by the way. There's a time from which you put your money down to when you could win, unlike these machines you're developing where it's an instant win, or an instant lose in more cases than not, therefore you can put more money into it. Is that not correct?

Mr Di Carlo: But you still buy lottery tickets to eventually win. You don't buy them to lose.

Mr Crozier: Trying to compare this to lottery tickets is like comparing movies to this. Please, sir, give the people of Ontario the right to at least acknowledge that they can tell some of the difference.

Mr Di Carlo: I'd ask you to come up to our office and I'll do a full demonstration for you.

Mr Kormos: You might get addicted.

Mr Crozier: I wouldn't mind doing that at all, but it would certainly convince me that it's not just like a lottery ticket but that I can put a lot more money into it in a lot bigger hurry and get my answer back more quickly and lose my money more quickly than I can with a lottery ticket. And they're right that not only may I be convinced; I may become addicted as part of the problem.

Mr Kormos: On a point of order, Mr Chair: Yesterday —

The Chair: I hope you're not misusing the point of order, Mr Kormos.

Mr Kormos: Yesterday the Minister of Consumer and Commercial Relations related to us that the only Canadian manufacturer of VLTs was perhaps, he thought, in the province of Quebec. Today we learn that there indeed is a Toronto-based company. I am calling upon the Chair to address this issue by virtue of recalling the minister to ask him to clarify why he was not aware of a Toronto-based manufacturer of so-called VLTs which suggests that it has been involved with the government. There appears to be a complete lack of control on this issue on the part of the minister.

The Chair: Thank you. That is not a proper point of order, Mr Kormos. It just goes to show you that this committee is providing a useful purpose after all.

1040

WOODSTOCK AGRICULTURAL SOCIETY

The Chair: If we could proceed, is there a representative of the Woodstock Agricultural Society present?

Mr John Gee: My name is John Gee. I represent the Woodstock Agricultural Society.

The Chair: Welcome. If you would proceed, sir.

Mr Gee: Honorable Chairman, members of the committee, ladies and gentlemen, I am general manager of the Woodstock Agricultural Society, which owns and operates the Woodstock Raceway, which at any given time on a race night would employ anywhere from 45 to 50 people. During the regular course of the year we

employ five or six full-time people and up to 10 or 12 part-time over the rest of the year. My purpose in appearing before you today is to lend support to the legalization of video lotteries at racetracks in Ontario.

As gaming has become a sociable, acceptable form of entertainment, legalization of video lotteries would provide a legal and controllable alternative to the grey market of gaming, which is a concern of the horse racing industry. In addition, legalization would provide revenues for government, revenues for legal businesses, revenues for charitable organizations and revenues to support programs for compulsive gambling.

In the case of the Woodstock Agricultural Society, revenues would be directed to maintenance of the racetrack and maintenance of our horse barns. We have several exhibit buildings on the property; we have several halls we rent out which require constant maintenance and upgrading; we have grounds. We have 30.4 acres to maintain, which is an ongoing, never-ending project. This must be upgraded and maintained on a continuing basis.

Reasons for believing that racetracks are an ideal location for video lotteries would be that people who go to racetracks make a conscious decision for that type of entertainment. It's not something I believe they do on the spur of the moment. Watching people at the track I see the same faces over and over, so I feel they make a conscious decision for that type of entertainment. Also, the location of lotteries at racetracks I feel would create employment. As I said previously, we employ anywhere from 45 to 50 people on a given race night. If we had the lotteries, obviously that would increase and our regular, year-round employment would increase.

Woodstock Raceway currently has facilities which could be utilized plus ample parking and a central location within the city. Along with this, Woodstock Raceway has been operating since 1951, which is a good, long length of time. The racetrack was started in 1950, finished in 1951, initially was used during the fair and in a few years was run on a regular basis.

As raceways are licensed by the Ontario Racing Commission and we must adhere to its rules and regulations to receive and maintain our licence, horse people — or horse persons, if you wish — are continually stimulating the economy. They're buying feed for their animals. They're buying medication for their animals. In our case, we have stall rentals. We have 85 animals on the grounds at the moment that we are receiving rental income from; I believe we have room for seven more. They have to have equipment, they have to have transportation for these animals and they have to pay various fees for racing etc. That's just to name a few ways they contribute to the economy.

We also feel local businesses are benefiting by the races and would benefit from the lotteries, such as service stations for gasoline. We have restaurants close by there, coffee shops, fast food outlets. All of these would reap benefits of increased business from people attending there.

One major concern has been the growth of the gaming market over the last few years, which has cannibalized the revenues of racing. The location of video lotteries at the racetracks we feel would allow recovery of all or a

portion of this lost revenue. As video lotteries are new and the impact they would have on parimutuel wagering and the social issues involved is unknown at this time, we also feel a review after six to eight months of operation may be in order to ascertain the degree of cannibalization and its effect. Woodstock Raceway has been competing with the gaming market for many years. When I say "gaming market" I'm talking about bingos, lotteries etc, this type of thing.

Also at this time I'd like to say something on the charity halls and make the suggestion that they also be located at the racetracks. This, again, is a socially acceptable form of gaming entertainment available today. Along the line of charities, we support many local organizations, such as the Victorian Order of Nurses; we have a VON night at the races. We have an MS night at the races — multiple sclerosis. We have a United Way at the races. We contribute to St John Ambulance. We contribute to the Shrine Clown Unit, which supports the burn hospital. We contribute to charities in various ways over the year.

Location of permanent charity halls at racetracks we feel would be beneficial for a reason very similar to the lotteries. Again, they would create employment. Video lotteries and charity halls on the same location along with racing would provide more than one type of entertainment at a central location. We also have the facilities, as I said before, to set up a permanent charity hall, ample parking, a central location within the city — one block from the main highway, so it's not very difficult to reach for anyone coming from out of town. I also feel that it facilitates planning for charities and it provides a consistency for patrons of the charity halls.

In conclusion, I would like to say that the Woodstock Agricultural Society would act in a socially responsible manner in the implementation and operation of video lotteries and charity halls at Woodstock Raceway, and also that the Woodstock Agricultural Society would cooperate and work in partnership with all levels of government to ensure successful implementation and operation of video lotteries and charity halls at the Woodstock Raceway. Thank you very much for your consideration and time. I'll try and answer any questions I can, if you wish.

Mr Tim Hudak (Niagara South): Thank you, Mr Gee, for your presentation. The opposition has made a few points just in a day and a half of hearings. One of them has tended to be that video lotteries will not result in jobs. I think they would probably maintain there'll be a loss of jobs, but your feelings are directly the opposite, sir. I think I gathered from your presentation that the introduction of video lotteries will mean a significant number of jobs at the Woodstock track, in agriculture and in that community as well.

Mr Gee: If you're asking exact numbers —

Mr Hudak: I don't need exact numbers. Their feeling is zero or no jobs, but your presentation seemed to indicate that video lotteries will put up track, will provide jobs in Woodstock, at the raceway, in agriculture.

1050

Mr Gee: My understanding on the lotteries is that they would be running weekly or at least once or twice a week. Nobody seems to know at this point, I don't

believe. However, the reason I say it would create employment is that you would have to have someone onsite as a cashier, I presume. I'm speculating here, I don't know the exact setup of them, but we would have to have at least three people onsite at the video lottery location at all times. At present we don't have full-time staff that we could allocate to that location, which means we would have to hire full-time people to run this. I say three people; I don't know. That's an unknown figure at this point in time.

Mr Hudak: Let me ask you this way too, because you brought up this take on the issue: Video lotteries, the machines at the tracks, put together with horse racing you seem to indicate are going to be an improved package, that they're going to be a new entertainment centre. My understanding is that this has worked very well in other jurisdictions like Winnipeg, like Dover Downs in the United States and other racetracks. It seems to me the racing community is very excited because they're going to have a new entertainment centre that's going to attract not only their traditional customers but an increasing number of customers and tourists to the racetracks once more. Is that a fair assessment of the way the industry feels?

Mr Gee: I'll speak on behalf of Woodstock, if that's okay.

Mr Hudak: Sure.

Mr Gee: There has been some discussion, there have been write-ups in the paper etc on the cannibalization issue, and if the lotteries are located offsite our feeling is that cannibalization would remove income from the raceway much the same as lottery tickets, bingos etc over the years have taken patrons away from the raceway by cannibalization. We feel that if they're onsite we would retain some revenues, maybe not all, that we could possibly lose through a cannibalization of the races.

Mr Kennedy: Thank you, Mr Gee. I'd like to follow on the point you've been making and what you term "cannibalization," which is part of the byproducts of what Bill 75 clearly enables: the large-scale proliferation of these particular gambling machines and activity to licensed establishments across the province. You perhaps are familiar with the experience in other provinces of that application. I wonder if you could comment on how much of a concern it would be to your raceway if there was in your local community what seems to be a potential doubling of the other gaming activity, which is what VLTs can conservatively represent, in other words the VLTs at the bars and so on. What could the potential impact be, given the experience you've had already with the gaming market competition?

Mr Gee: What would it be if they were located offsite? Is this your question?

Mr Kennedy: Yes, which is the plan under Bill 75.

Mr Gee: Our feeling is that we would lose revenue from racing. We're basing that on the history of other gaming forms of entertainment that people have available.

Mr Kennedy: Do you have any sense of how substantial that might be?

Mr Gee: I wouldn't want to guess at this time.

Mr Kennedy: In terms of some of the scope, we're looking at each machine having average net revenues of \$25,000, probably gross revenues in the order of \$50,000.

Mr Gee: Per machine?

Mr Kennedy: Per machine. Everyone I think has some appreciation for the agricultural and horse appreciation and other implications of raceways, but this clearly is a plan to introduce the majority of these machines outside of controlled environments and into the community because of the very sizeable revenue projections this government needs from this particular form of gambling. I wonder, on balance, what the Woodstock Agricultural Society would say to the government. If the choice is to do Bill 75 and have more and more of the gambling market out there competing with raceways or not to do it at all, what would be your recommendation?

Mr Gee: Whether you compete or whether you don't or not have them at all, is this your question?

Mr Kennedy: Or not have them at all, in other words, because of the potential damage to the raceway.

Mr Gee: In that case I would suggest possibly not to have them at all.

Mr Kennedy: Not to have them at all because of the damage they would cause.

Mr Gee: Not to have them at all. Your question regarding a possible loss of revenues: I've heard various figures and I can't substantiate anything I've heard, obviously, but I've heard possibly as high as 25% cannibalization.

Mr Kennedy: How impactable would a 25% cannibalization be for your local raceway?

Mr Gee: Of revenues?

Mr Kennedy: Yes.

Mr Gee: I did some number crunching the other day. Based on our 1996 budget, 51% of our revenue is from racing. If you reduce that by 25%, obviously your expenses won't be reduced totally by the same amount. It could have a very drastic effect, maybe even to the point where we may look at not having racing.

Mr Kormos: Gosh, with all due respect, I don't know why you're here. You're okay. The minister has already said that racetracks are going to be the first locations of these slots, and far be it for him to change his mind, I'm sure of that.

What's interesting though is that, as I recall back in 1993 when the casino proposition was being floated here in the province, the racetrack industry, maybe not your racetrack, by and large was opposed to casinos. They appeared at hearings and rejected casinos. Then they said, "Well, casinos are okay as long as they're at the race-track." Remember that stage of the argument?

Mr Gee: I must apologize but I've only been with the agricultural society since January 29 this year, so if you start talking history —

Mr Kormos: Okay, fair enough. In 1993 the OJC at first said, "We're opposed to casinos because casinos will detract from the horse race industry," which I understand. I come from down in Niagara, along with Mr Hudak. The Fort Erie Race Track employs far more than just the personnel at the track; it sustains an agricultural industry there that at the end of the day employs a whole lot of people.

The horse race industry by and large was opposed to casinos, but when it saw the writing on the wall it said, "Well, okay, casinos are okay now but only if they're

located at racetracks." Of course that didn't happen; it didn't happen in Fort Erie as contrasted to the city of Niagara Falls although they're a short distance apart. Now the horse race industry is here saying, "But we think it's slick that you put slots at our track."

There is such a thing as a better and worse horse player, isn't there, in terms of a better?

Mr Gee: Better or worse as to whether they are winners or not?

Mr Kormos: Better or worse as to whether or not they can read a racing form —

Mr Gee: That's true.

Mr Kormos: — as to whether or not they know the qualities of a horse that would put that horse in a better position to win.

Mr Gee: There are people who know horses and how to read a program much better than others, yes.

Mr Kormos: And drivers and jockeys.

Mr Gee: True.

Mr Kormos: Then there are some people who bet their house number.

Mr Gee: And the colour of the horse.

Mr Kormos: You got it, and the colour of the horse and the day of the week.

Mr Gee: Right, no question about that.

Mr Kormos: Can you think of any such thing as a better or worse slot machine player?

Mr Gee: Better or worse? No. While there will be people who will not be acquainted with them and obviously will have to learn or follow the instructions, once they learn they know how to do it.

Mr Kormos: Learn? The hole where you put your money in, that's all there is to learn, isn't there?

Mr Gee: Could be. I'm sure there are instructions other than that.

Mr Kormos: You learn, you push the button.

Mr Gee: Okay, to answer your question, probably not. There probably is a slot machine player and that's it; there's no better or worse.

Mr Kormos: No skills required other than being able to place the coin?

Mr Gee: One skill would be a conscious decision whether or not you want to do it.

Mr Kormos: When you're playing the game, is there any skill required other than placing the coin?

Mr Gee: No.

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Mr Kormos: Any logic or rhyme or reason to the process of playing the game?

Mr Gee: That I don't know the answer to. I've never played the machines so I can't answer that one. I don't know. As a matter of fact, I've never actually been that close to a machine.

Mr Kormos: How would you anticipate isolating slot machines, one-armed bandits, at the racetrack from the general population so that you can control people's access to them in terms of age?

Mr Gee: We would locate them in a room by themselves. There would be no parimutuel betting, no other activities in that room, and there would be controlled access at the door.

Mr Kormos: In other words, there'd be no television screen broadcasting the race at your track or at any other track?

Mr Gee: I wouldn't think so, no. They would be in a separate location.

Mr Kormos: So you're looking for people who have no interest in the horse races but who want to play slots?

Mr Gee: I'm sure there will be people go back and forth. I don't know the answer to that. My understanding is that they are to be located in their own location, with controlled access, with a 19 years age minimum.

Mr Kormos: You talk about small business. My problem is that at a rate of a mere \$143 a day into each machine, with the ratio the government is proposing — one machine for every 550 population — in my community of nearly 48,000 people, Welland, at the rate of \$143 a day, 87 machines, you're talking about almost half a million dollars a year being pumped into those machines, which isn't being spent at the corner service station, at the local restaurant, at the local supermarket, at the small-town retailer or the small-town business provider. How does that type of siphoning of money out of people's pockets support small businesses in the community?

The Chair: Thank you very much, Mr Kormos. Mr Gee, the time is up for your presentation. You won't, unfortunately, be able to answer that very interesting question from Mr Kormos. I thank you very much for attending here today.

Mr Gee: Once again, I thank the committee for their time.

BARRIE RACEWAY

The Chair: Is there anyone here from the Barrie Raceway or the Days Inn?

Ms Jane Rees: I'm from Barrie Raceway.

The Chair: Welcome. You're Ms Jane Rees?

Ms Rees: Yes.

The Chair: You're here early. That's very conscientious of you.

Ms Rees: Not as early as I thought I was.

The Chair: Thank you for being here early, in any event, and I ask you to proceed, Ms Rees.

Ms Rees: Members of the committee, I appreciate the opportunity to appear before you today in support of Bill 75, as it provides for the legalization of video lotteries at racetracks.

I manage Barrie Raceway, a harness track at the junction of Highways 400 and 27 in Barrie, Ontario. The racetrack opened in December 1973, and last year had total wagering of \$14 million on 66 days of live racing and the year-round operation of offtrack or teletheatre wagering.

The track itself has 14 full-time employees and 130 part-time, and thousands of others are employed in the racing industry in our area, helping to make up the 40,000 people employed in the industry in the province of Ontario. Most of these jobs are not in urban centres where the racetracks are located but are instead agricultural in nature. Video lotteries, we feel, will help to preserve these jobs as well as creating new ones as our facilities are upgraded and new employment opportunities are provided.

We support the legalization of video lotteries at racetracks for several reasons. At the present time, an estimated 20,000 to 25,000 illegal machines of this nature are operating within the province with a loss of \$2 billion in revenue to the underground economy, or grey market. Horse racing has not been involved in this activity and remains an ideal launching ground or controlled test market for these machines.

Horse racing is the longest-running gaming industry in the country, totally regulated in all aspects by both provincial and federal levels of government. Participants and staff are licensed and background searches are done into their histories. Issues of security are commonplace in our industry.

We have sophisticated gaming technology which has been in place for years and is state-of-the-art. We are totally familiar with online gaming and have been operating almost 100 remote offtrack teletheatres over the past three years. These sites have worked very successfully. We are responsible for the security and the transportation of large sums of money, and we have in place systems and physical facilities which are totally adaptable to this new use.

Originally, racing had a monopoly on legalized gaming in Canada, but this situation has not existed for many years now, with the advent of bingos, lotteries, sports betting and casinos of all sizes. Gaming has become a socially acceptable form of entertainment and the competition for the gaming dollar is very tough.

Just last week, Ontario's first native casino opened outside Orillia. Casino Rama, the largest casino in Canada, is less than half an hour from Barrie Raceway, and its effect on our operation is uncertain at this time. Historically, casinos have negatively impacted racing by upwards of 35%.

Racing is willing to compete with these other forms of gaming, and in fact tracks are becoming sports and gaming centres, offering the public many choices of activities on their entertainment menus. Racetracks are particularly well suited, we feel, to activities such as video lotteries. We are located in urban centres throughout the province, we have ample parking, and we are largely still an adult activity. Only those who come to the track are exposed to this activity; we're a limited-access environment.

Our staff are trained in the service of alcoholic beverages. They are accustomed to screening young customers for proof of age for the purchase of liquor as well as for the purchase of parimutuel tickets. We have a history of being socially responsible and our association, Racetracks of Canada, supports the Canadian Centre for Compulsive Gambling.

We at Barrie have an excellent reputation with our local charities, as do most racetracks. We hold fund-raising evenings for many groups in our area. Promotions with the Children's Aid Society, the Lung Association, the Heart and Stroke Foundation, the Share the Light campaign to bring children from Chernobyl, the Epilepsy Foundation, the Red Cross, the Barrie food bank, all of these activities continue to contribute back to the community through our fund-raising at the racetrack.

We have a built-in customer base, expanded recently through intertrack gaming, which is predisposed to

enjoying gaming as a leisure activity. The racetrack is the perfect place to implement this new form of gaming in a responsible supervised setting.

We are not without concerns about this step. We worry about the cannibalization of our own wagering dollars by this new activity. We do not know what the impact of video lotteries will be, but we're prepared to move forward. Just as there were with the onset of teletheatre wagering, there are unknowns that we must face as racing continues to evolve, but we are prepared and eager for the challenge. Our industry continues to work in partnership with government, and we suggest that an extension of this partnership to ensure successful implementation of video lotteries would be appropriate. We further suggest a period of controlled operation at racetracks, after which a review could be completed to examine the impact of video lotteries on the racing industry as well as other issues of public concern. Thank you.

Mr Crozier: Thank you, Ms Rees, and welcome to the committee. Has the Barrie Raceway had a race date since the opening of Casino Rama?

Ms Rees: We had one on the opening day, on Wednesday last, and one on Saturday night.

Mr Crozier: How has your handle been affected?

Ms Rees: We were not significantly down from previous live nights this year.

Mr Crozier: You still, though, feel uncertain about the long-term effect it might have?

Ms Rees: Two nights are not a very long period to assess it. As well, we have a seven-day operation of intertrack wagering and I think it'll take some time before we find out what the effect of that is. We're also very positive about it. We know the numbers of people the casino will bring past our door. We're very well situated to take advantage of that on Highway 400, and we're working in partnership with the casino on some initiatives. We're not entirely negative about the casino.

Mr Crozier: That's great. I just wondered what your limited experience might be to date. You support, obviously, VLTs at the track, but you've raised concern beyond that about the cannibalization of revenue to the track if there were these video form of slot machines in all the bars and licensed establishments. That's where your concern lies.

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Ms Rees: That's a concern to us.

Mr Crozier: So could you tell us to what degree you either oppose or support the third step of the government's proposed plan, that they be in licensed establishments?

Ms Rees: Obviously racing has to compete with other forms of gaming in other places and we're prepared to do that. We would obviously prefer them to be at the track in order to draw people there, in order to perhaps also wager on horse racing. We would be the last people to deny others the right to do the same thing. Obviously it would be much greater competition for us than if they were at the track. That's clear.

Mr Crozier: You may not want to deny it, but does that mean you support it?

Ms Rees: It's my understanding that is the government plan.

Mr Crozier: Yes, and as others have alluded to, we're not very optimistic that the government plan is going to change, because they need the money. Really the only reason for this type of gambling being introduced is for the money, because as the title of the bill says, they're reorganizing the Gaming Control Commission, or at least that's part of the title of the bill, to regulate alcohol and gaming, but it goes on to say "to fund charities." If they really wanted to fund charities — you might agree with this — they wouldn't take most of the money then, they'd probably give it all to charity.

Ms Rees: I think the need is definitely there, as it was there with the last government and the implementation of casinos. I think that grew out of the same need probably.

Mr Crozier: But I'm trying to get your feeling one way or the other about the extension of these gaming machines beyond racetracks. You say you don't want to deny anybody, but I'm trying to understand whether you support it or not.

Ms Rees: We would prefer that they be at the race-track but people who are involved in horse racing respect the public's right to choose their source of entertainment and what they do with their entertainment dollars. I wouldn't deny that.

Mr Kormos: Thank you, ma'am. I noted that you referred earlier on in your comments — because this is all part of the new spin. The horse track industry is under real pressure. It has been for a good chunk of time and I'm told it is across North America. There's simply no two ways about it. It has to find some way to pull itself out of the doldrums. I suppose any number of things have impacted on that. Who knows?

It was just interesting because you described gambling as a leisure activity. I appreciate that's the message, but I've been to enough horse races and racetracks — palms are sweating, blood pressures rise, people are praying to gods they wouldn't otherwise acknowledge, they're throwing programs down on the ground in disgust.

Ms Rees: That's part of the excitement.

Mr Kormos: They're anthropomorphically talking to horses that don't even know what their names are. They're cursing the gods. They're searching through wallets for another 20 bucks because they got a triactor that they know is just going to do it. They're prevailing upon people they've only met once or twice to "Please spot me \$50 because there's only one race left and I know I can pull it off on this one." Whew. That's not a very leisurely environment. But none the less, having said that —

Mr Guzzo: He's never been to your track. He goes to Fort Erie.

Mr Kormos: And I understand why the racetrack industry wants a piece of this action. I understand that, because the racetrack industry, the horse race industry, is in trouble, it's seriously in trouble. The smaller community tracks are in bigger trouble by and large than mainstream tracks.

But you talked about legalization of these slots as a way of getting rid of the illegal machines, because the estimates range anywhere from 15,000 to 25,000, as you've indicated. When I reflect on the fact that there's already all sorts of — they call them poker games, they

call them any number of machines that pay off only in extra games to play but can similarly be adapted to pay off in a voucher so the bar owner or tavern owner gives you cash.

Ms Rees: I think we're naïve to assume that they pay off in points only in most of those places.

Mr Kormos: They don't cough up coins, you see. This is the whole secret. The new technology permits slot machines to simply spit out a voucher.

Ms Rees: That's right. The voucher is good for —

Mr Kormos: That's what happens, or to identify a voucher, so you can either play the games or you can cash the games in. That's the 1996 version of slots.

In view of the fact that an operator who has an illegal slot or a grey market or a black market slot gets to keep 100% of the take, doesn't have to pay taxes on it, doesn't have to share it, how is the introduction of legal machines going to displace illegal machines when in fact the motive for having an illegal machine is pretty substantial cash-wise?

Ms Rees: Certainly it is, but it's not impossible to eradicate those machines. In our area, through Barrie, Angus, about a year ago, there was a giant sweep done, and many of those machines were eliminated.

Mr Kormos: Exactly.

Ms Rees: It's possible to do that.

Mr Kormos: It requires policing. It has nothing to do with the government getting its piece of the action out of legalized slots.

Ms Rees: Certainly the taxes that will be returned from those machines will make a substantial difference if those are eliminated.

Mr Kormos: The government needs that money. The government needs that money —

Ms Rees: That's what I mean. The government will get it. It's not getting it now.

Mr Kormos: — because it promised the rich of this province a tax break. Now it's got to pay them off. It's got to piece them off, you see. It's got to cough up. It's got to deliver.

Ms Rees: Could I just make a comment on your characterization of the racetrack customer, Mr Kormos?

Mr Kormos: Sure.

Ms Rees: You seem to know it rather well and you —

Mr Kormos: You bet your boots I do. As a matter of fact, I probably know more about a whole lot of the areas of gambling than more than a few members of this committee, and I'm not afraid at all to acknowledge that, because I think it's important. People who come here and somehow suggest that they've never seen this sort of activity, I think it's naïve.

Ms Rees: It's very important, and through your work as our minister in past years, you're very aware of the economics and the situation of racing.

Mr Kormos: That's right, and I'm also aware —

Ms Rees: I would just explain that there is a whole other area of customers who attend the track, who are by far the majority, who go for a social evening. They go to the dining room. They take their wives.

Mr Kormos: Or their husbands.

Ms Rees: Or someone. When they get to the end of their \$20 or their \$40, they go home. Not everyone is out of control at the racetrack.

The Chair: Thank you very much, Mr Kormos. We'll move to Ms Bassett.

Ms Isabel Bassett (St Andrew-St Patrick): Thanks, Ms Rees, for your presentation. I hear you run one of the best tracks in the province, so thanks for taking the time to come down and talk to us today.

The Treasurer said in the budget that it was very important to introduce video lotteries into a controlled environment. I wonder if you have given any thought to how you would make sure that minors don't have access to video lotteries at your racetrack.

Ms Rees: Certainly the areas that we're looking at in our own facility, which are the only areas I can talk about really with any validity, but I'm sure it's the same at each track, will be self-contained. I mean they are rooms. They are rooms with exits and entrances that can be policed, that you can require proof of age. We're very used to doing that. We do it every night. These are licensed areas, and our staff and the staff that we would hire all go through the training, and they are all very carefully trained in recognizing signs of drunkenness and also to identify minors. I don't think that would be a large problem.

Ms Bassett: You don't see that as a concern at all.

Ms Rees: You would just require photo ID the way they do in bars.

Mr Guzzo: Just enlighten us. How many days in 1995 did Barrie operate live racing?

Ms Rees: Sixty-six live in 1995. That has gone from 100. We normally raced 100 live days of racing.

Mr Guzzo: What about offtrack now?

Ms Rees: We are open now seven nights a week.

Mr Guzzo: What was your total handle in 1995?

Ms Rees: In 1995, \$14 million.

Mr Guzzo: How much did you send to the Ontario government?

Ms Rees: We sent between 7% and 9% of that, and then the rebate of 2.4 was rebated back to our horsemen.

Mr Guzzo: Yes, but that's through the — so 7% to 9% of \$14 million, and what do you send, half of 1% to the federal government?

Ms Rees: It's 0.08%.

Mr Guzzo: Thank you.

Ms Rees: You might be interested in the shift of wagering lately with the teletheatres. Three or four years ago we had \$14 million on live racing, and that meant a great deal more to the racetrack than it does today. Today we anticipate \$3 million on live racing this year, and the rest is made up of intertrack wagering. That just tells you the scope of the attractiveness of other products that we bring in from around the country and the continent on which —

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Mr Guzzo: Are you carrying Saratoga this afternoon?

Ms Rees: No, we are not.

The Chair: Thank you very much for your presentation, Ms Rees.

Mr Hudak: On a point of order, Mr Chair: Yesterday Mr Kormos mentioned that in his opinion video lotteries were the most addictive form of gambling. On several occasions today he has said that slot machines instead are the most addictive form of gambling. What brought it to

mind was his recent portrayal of the racetracks. He makes an interesting portrayal of the racetracks as being highly addictive as well. In other arguments that the opposition has used in terms of instant gratification, no skill required, you could easily make an argument that break-open tickets would follow that same sort of line of argument.

I wonder if Mr Kormos would be kind enough to provide the evidence that he refers to in his studies as to which form of gaming, whether it's slot machines or video lotteries or racetracks or break-open tickets —

Mr Kormos: Thank you, Mr Chair. I will —

The Chair: Other than your own personal experience, Mr Kormos, if you could provide us —

Laughter.

Mr Kormos: Quite frankly, that's an interesting comment, because any one of us at this committee table could have suffered a gambling addiction or experienced it in our families or among our friends or among our households, as we could have had a personal addiction to drugs or alcohol, as could our family members or friends; in each instance scenarios that we would have utilized in developing our background, our expertise or experience, or our perspective on this.

I think that comment was an unfortunate one, Mr Chair. I would be pleased to talk about a gambling addiction if I had had one. I'm fortunate that I haven't. But I've had some experience with the phenomenon, and it's neither a pleasant one nor is it a laughable one; no more so than any other disease. I find it interesting —

The Chair: Mr Kormos, you were asked to provide evidence. You are not testifying in front of this committee.

Mr Kormos: I shall. I respond now to your, at the very best, supercilious comment which seems to have permeated some of the discussion here. There seems to be some giggle-giggle, adolescent quality to the discussion of a particular facet of our concern here, which is addictiveness of this —

The Chair: Mr Kormos, do you wish to answer the question or do you not?

Mr Kormos: I certainly will.

The Chair: Because our next presenter is not here and I intend to adjourn otherwise.

Mr Kormos: I'd be pleased to take the time. First of all, Mr Hudak, as is to be expected, misinterprets and fails to properly relate the contents of my discussion about racetrack betting. I refer him specifically to the article by Mark Griffiths, which I referred to yesterday, from the University of Exeter, the *Journal of Gambling Studies*, volume VI, subvolume II; also an interesting one where Griffiths talks specifically about the psychology of slot machines and how they in themselves are designed in such a way as to make them peculiarly addictive. That is in the *Society for the Study of Gambling* newsletter —

The Chair: Excuse me, Mr Kormos, I hate to interrupt, but Mr Hudak —

Mr Hudak: Thank you, Mr Chair. I apologize to Mr Kormos. I should have made my request a bit more clear. He's repeating, in effect, the argument he made yesterday. I appreciate that. I'd like to make my request a bit more clear. Is it possible to provide the actual studies and

methodology behind those studies for my information and for the benefit of the other members of this committee so that we can as well go through these studies in detail and spend time looking through them and —

The Chair: I thought that's what he was doing, Mr Hudak.

Mr Hudak: I think what he's doing, Mr Chair, is taking parts and giving his interpretations of these studies. I wonder if he could —

The Chair: Well, he's providing us with references as to on what he bases his opinions. If you would just list them, Mr Kormos.

Mr Kormos: Mr Hudak is a university graduate. I wonder who wrote his essays. He seems not prepared to do his own research. I've given him the sources, and if he's prepared to go and do the work and find them and read them, he's welcome to. Quite frankly, the legislative library can be a useful source. As I indicated, the Griffiths work from the University of Exeter has been published in a number of publications. I started to give them, but having given the name of the researcher, Mark Griffiths at the University of Exeter, I'll leave it at that.

Mr Hudak should of course read, if he hasn't already, the Brandon University study that I made reference to yesterday, and that of course is the Gfellner study. It's a very interesting one because it's a profile of so-called VLT gamblers in Brandon, Manitoba.

Mr Flaherty: On a point of order, Mr Chair: Is Mr Kormos saying that study supports the conclusion he is stating here? I've seen the study, and it doesn't.

The Chair: Gentlemen, he is attempting to answer the question and he's listing on what studies he bases his opinion, which he has repeatedly given us.

Mr Kormos: The problem with these people is they want to —

The Chair: Mr Kormos, I'm sorry for the interruption. This is not an opportunity to make a speech. Please provide your sources and the individuals involved can read them and decide for themselves.

Mr Kormos: But once again I wonder who wrote these people's essays in high school. Why don't they do their own darned research? It seems to me that they've got a ministry that is pathetically unqualified to present this bill before the committee.

The Chair: Mr Kormos, that really doesn't add to the deliberations.

Mr Kormos: Norm Sterling didn't have a handle on it. These Conservative members don't have a handle on it. They're embarrassed by questions that were put to their minister and to senior policy advisers yesterday. They aren't aware of the plethora of research that's been available. I've got a pile of it; I've read a pile of it. There's more and I've got more coming. They can do their own research; I'll do mine.

DAYS INN

The Chair: We have our next presenter here from the Days Inn, Mr Vaskas. Welcome and thank you for attending somewhat early today.

Mr Jonas Vaskas: My name is Jonas Vaskas. I'm the general manager of the 536-room Days Inn located at 30

Carlton Street directly adjacent to Maple Leaf Gardens. Thank you for allowing me the opportunity to appear before your committee today.

I would like to begin by stating that I am in support of Bill 75 as it relates to video lottery terminals and urge the government to allow their implementation within the hospitality establishments as soon as possible.

Our industry has still not fully recovered from the recession and it will take many more years to recover the losses incurred over the last five years. Last year our hotel experienced very encouraging improvements in food and beverage revenues. However, for the first six-month period in 1996 we have recorded a decrease of 25% in combined restaurant, banquet and bar sales.

The Minister of Finance, in his budget presentation on May 8, said that the government was going to allow VLTs to help our industry. Specifically, he said, "We believe that VLTs, if implemented within tight regulatory control and in limited-access environments, can meet a legitimate entertainment demand and provide a significant stimulus to the hospitality industry." Minister Eves also made reference to approximately 15,000 illegal machines currently in operation throughout the province.

It is important that the implementation stage for our industry not be delayed and that the timing be as soon as possible following the racetrack and charitable casino schedule. Our hotel currently generates approximately \$66,000 yearly in banquet room rental and food and beverage sales from charitable casino operators. With the establishment of permanent locations this income will be lost. From the government perspective, delaying the implementation within our industry will mean delay in receiving over \$500 million annually for machines allocated to our sector. Conversely, it means that the untaxable revenue from the illegal machines will remain in the underground economy.

From our industry's perspective, a delay in implementing would hurt us, the reason being that during the first stage — to racetracks and charity casinos — business dislocation may result. Customers will gravitate where they can legally play VLTs. We cannot afford to lose any more business, even for a short term. As well, who knows if that customer will return.

Those businesses close to the casinos in Windsor, Orillia, Sault Ste Marie and now Niagara Falls need VLTs as well. The casino in Windsor, for example, has had a devastating negative impact on local food and beverage establishments. On the other hand, VLTs will not negatively impact casinos. This has been proven by a study conducted by Dr Marfles of Dalhousie University in Nova Scotia.

VLTs work as an attendance generator because they are an acceptable form of entertainment our clientele want. VLTs will undoubtedly be of interest to our European, American and Asian guests.

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Independent research conducted by Dr Gfellner of Brandon University found that the average VLT player plays for 30 minutes once or twice per week and spends an average of \$10. She states that to most people, VLTs are perceived as a modest form of risk-taking in an entertainment-oriented social environment. Finally, the

overwhelming majority of VLT players reported that the most important reason they frequented a bar or lounge was to relax, be with friends, socialize and meet people. It is an affordable and budgeted activity that is viewed as recreational.

A new brand of beer does not increase the overall level of alcoholism. With the existing forms of gaming today — lotteries, sports pools, bingos, horse racing, casinos — the introduction of legitimate video gaming in hospitality-sector establishments will not increase the potential for compulsive or problematic gaming in Ontario. Research shows that less than 2% of the population are potential compulsive gamblers and another 3% to 5% may experience some problems.

I would like to take this opportunity to point out that the public supports VLTs in our establishments. Our customers tell us this, illegal gaming machines at competing locations prove this, and surveys conducted by Environics and Angus Reid confirm this.

On behalf of my fellow employees, I urge your committee to recommend quick passage of Bill 75. Our situation is critical and we need the stimulus of this new form of entertainment, as it would greatly benefit our industry and help to improve our ability to provide much-needed employment. The positive results of VLTs within the hospitality sector have been demonstrated by the province of Manitoba. Thank you.

Mr Kormos: You quote Gfellner, and that's an oft-quoted section of Gfellner because of course it talks about averages and it contains the same — well, one has to understand what an average is. An average is an average and doesn't take into account the two extremes. What about Gfellner's suggestion on page 18 of her study where she writes: "[M]ore people gamble when opportunities to gamble are more readily available. Thus, the accessibility of VLTs places more people at risk for gambling addiction and for some this will include involvement in criminal behaviour." Did you read that paragraph in Gfellner's report from Brandon University?

Mr Vaskas: No, I did not, sir.

Mr Kormos: You obviously endorse her determination about what the average — statistically, what constituted an average — VLT player spent and the frequency of time playing. You concur with that, don't you?

Mr Vaskas: Yes, sir.

Mr Kormos: I trust then you'd agree with her conclusion reached on page 18, that the more accessibility there is to VLTs the more gambling there's going to be, and that "places more people at risk for gambling addiction and for some this will include involvement in criminal behaviour."

Mr Vaskas: I have not read the report, sir, completely.

Mr Kormos: You're prepared to approve of one paragraph in the report; you make reference to it in your submission today.

Mr Vaskas: Correct.

Mr Kormos: But you haven't read the report, is that correct?

Mr Vaskas: I've read excerpts of it. I haven't read the whole report.

Mr Kormos: But you're prepared to agree with Professor Gfellner as to her determination of what the

average, the statistical average, VLT player spends and the amount of time they spend at the machine, correct?

Mr Vaskas: And that's what I've written in my statement, sir, yes.

Mr Kormos: But you're not prepared to endorse what she concludes about the contribution of so-called VLTs to increased gambling and the risk for gambling addiction and the risk for criminal conduct to support gambling habits.

Mr Vaskas: I've already stated that, sir.

Mr Kormos: That what? You're not prepared to agree with that.

Mr Vaskas: I have not read the report so I cannot agree with something that I haven't read completely.

Mr Kormos: I'll tell you what. You read an excerpt that you clearly agreed with or else you wouldn't have put it in your submission, right?

Mr Vaskas: That's correct.

Mr Kormos: Let me read you this excerpt, page 18: "Although few men reported involvement in illegal activities to better cover gambling debts, two thirds were classified as pathological gamblers. This is consistent with associations between pathological gambling and income-generating crime." In other words, there's a relationship between the two. "As shown elsewhere, more people gamble when opportunities to gamble are more readily available. Thus, the accessibility of VLTs places more people at risk for gambling addiction and for some this will include involvement in criminal behaviour."

That's the full excerpt. It's the full paragraph on the bottom of page 18. Do you agree with that as readily as you agree with the excerpt that you had previously read of Professor Gfellner's study?

Mr Vaskas: I also make a statement in regard to a new brand of beer. Does that increase alcoholism? Does the opening up of another lounge or the availability of another legal alcohol establishment increase alcoholism?

Mr Kormos: I don't know what research you relied upon to conclude that a new brand of beer does not increase the overall level of alcoholism. I don't know whether that's the case or not. But I do know what Professor Gfellner from Brandon University says about increased accessibility to VLTs and the danger it poses in terms of increased gambling, the risk of increased gambling addiction and the increased risk of involvement in criminal behaviour. That's the result of her study at Brandon. You clearly endorse the research there.

Mr Vaskas: I stated an excerpt from the research basically outlining how it pertains to an average VLT player. That's what I've included in my statement.

Mr Kormos: You want to agree with the professor in her identification of a statistical average, but you don't want to agree with her when she talks about the addictiveness of the game and about the criminal activity that can be involved with addicted players.

Mr Vaskas: I don't want to be put into a situation to agree or disagree with something I haven't fully read, and I completely acknowledge that I have not read the entire report. I'm certainly not an experienced orator or a politician as yourself, sir, but I think it's common knowledge that we take segments of reports and sources to better our argument, and that's what I've done today.

Mr Kormos: You're in fine company, sir.

Ms Bassett: Thanks for your presentation, Mr Vaskas. As I mentioned in the previous presentation, I said that the Treasurer had said it's important to introduce video lotteries in a very controlled environment. Some people raise the fear that perhaps the proximity to alcohol in the hospitality business where lotteries would be might mean that people would become intoxicated and gamble away their last dime. I wonder, do you see your bartenders as taking responsibility to say, "Hey, you can't gamble any more tonight"? Have you thought that through?

Mr Vaskas: I really don't see that as being an issue because our bartenders are trained to oversee the consumption of clients. I managed a hotel in Alberta when VLTs were introduced there. I didn't have them in our establishment, but I knew others who had them, and they did not pose a problem. I lived in Germany for a time where they have a form of VLT with very modest returns, and it was treated as just a form of recreation.

Ms Bassett: So your bartenders would be responsible, in a way, to cut somebody off?

Mr Vaskas: Absolutely. I've been to Las Vegas. Certainly it's on a much grander scale and I would say probably much more difficult to control, but I didn't see wanton intoxication in those casinos.

Mr Hudak: Mr Vaskas, I think there's a little bit of politics afoot, and this will happen in the committee process. You chose from the Gfellner study a certain page and Mr Kormos in his statements yesterday chose page 18 and ignored the fact you brought up today, that the average video lottery player seems to be a responsible individual. Either side can line up and take an expert, can quote subtly from their studies. Committee people could do the same thing here, but I'd like to speak about the contents of the bill, if I could.

1140

If you talk about gambling, the more widespread it is the more addictive it could be, with the previous government introducing casinos and Sport Select and lotteries and these sorts of things, scratch and win tickets. This government has decided to put aside 2% of the revenue to combat addiction, to do research in that area so we can find out, is Gfellner right or is another area right. We're putting a substantial sum into that area so we can find out exactly what the answers are and do some treatment. What do you think about the government's position on the 2% towards addiction research and treatment and the amount of money that's going to the charities through this program?

Mr Vaskas: Personally, I think it's very progressive. I do not deny that there is a problem as far as gambling is concerned. I'm sure there is. I don't think it can be attributed to VLTs or any specific form of gambling. If VLTs aren't there, the compulsive gambler will utilize another source.

Mr Hudak: If I could sum that up, the previous governments had the opportunity to do the same thing. They probably had access to a Gfellner type of study that said the more widespread gaming is, the more opportunity there is to become addicted to it. That's the Gfellner study, I guess, from page 18; I'll certainly read that. This government would face the same questions, but has

decided to put aside that 2% to deal with this area, but all the previous governments did was kept the money and ignored the addiction problems. We're going to fight that, and I appreciate your support for that.

Mr Kennedy: When you look at your clientele and your overall outlook as the Days Inn, you have a mixed clientele, obviously, in terms of families and so on. Are you not worried about the association with gambling in your other establishments, your restaurant and your hotel business?

Mr Vaskas: As stated in my presentation, for about the last two years on a monthly basis we have hosted charity casinos in our hotel and we have not experienced any problems. The way I understand VLTs — in our establishment, we have approximately 80 seats in our lounge; the maximum we would receive would be maybe four to five machines. I certainly don't see that as something that could be looked upon as a negative.

Mr Kennedy: The limits in other provinces, by the way, are between 20 and 40 machines at a single location. I wonder how you'd respond to a comment talked about yesterday from Staff Inspector Gottschalk with the Metro Toronto Police. He says VLTs are a nightmare and he says crime can be expected to rise, based on the evidence of other jurisdictions. How do you feel about associating your establishment with an activity that raises that kind of concern on the part of police?

Mr Vaskas: I would certainly have a concern if I felt it was a legitimate concern.

Mr Kennedy: Is there any way you can reconcile the investigation you've done as an establishment, obviously a responsible member of the business community, into the prospect of VLTs and the kind of concerns being expressed by the police force?

Mr Vaskas: I can only say that I've experienced them in New Brunswick, but in the lounge there I believe the limit was only one. It certainly wasn't a form of wanton gambling, as one would experience in Las Vegas, with blackjack tables and slot machines. We're talking about one to, say, five machines in an establishment in a corner somewhere. Clients choose to play them or they choose not to play them.

Mr Kennedy: So you don't have the concern in terms of crime that's shared by the police.

Mr Vaskas: No, I do not.

Mr Kennedy: In terms of the other figures in your report, you say the industry will delay receiving \$500 million. Could you explain that? The minister here said yesterday that he wasn't sure either how much money he was bringing in, which was startling and of great concern, but he seemed to indicate \$180 million as an annual rate, but then in the hallway \$500 million as the government's take. I understand it's 10%, perhaps, for the establishment.

Mr Vaskas: My intention there — it says from a government perspective that the government would receive \$500 million.

Mr Kennedy: I see. So the "our" and the government are synonymous in that respect.

Mr Vaskas: It means delaying implementation within our industry will —

Mr Kennedy: I just wanted to clarify. Is there an estimate of how much benefit there would be for your industry or for the hotel?

Mr Vaskas: I do not have an estimate.

Mr Kennedy: It might be of interest to you to be aware that the studies in the States are showing that the dollars to fund video lottery terminals — to give you a sense of proportion, in South Dakota, where they were first introduced, they are now nine times as large as the state lottery in terms of the amount of money they take, and that money comes from somewhere in the economy. Where it comes from in the economy is discretionary entertainment dollars as well as basic needs people have. I'm wondering if you don't have at least some concern that the dollars you currently enjoy from discretionary entertainment income will be lost to this activity.

Mr Vaskas: There may be some attrition there.

The Chair: Mr Vaskas, thank you very much for your presentation here today.

We are adjourning until 1:20 this afternoon. We will start promptly at 1:20, as we have a plane waiting again.

The committee recessed from 1146 to 1320.

ONTARIO VIDEO GAMING CORP

The Chair: Our first presenter is the Ontario Video Gaming Corp, Mr Marshall Pollock.

Mr Marshall Pollock: Thank you, Mr Chair. With me is Jim Szarka, the retired deputy commissioner of the Ontario Provincial Police, a director of the corporation, and Norma Coleman, a director of the corporation from Windsor. Our third member was supposed to be Mike Fraser from the United Food and Commercial Workers International Union, one of the large investors in our corporation, but he's not here, so filling in for him is Paul Morton, the chairman of the corporation.

First, having participated in this morning's activities as part of the audience, I'd like to put this whole issue of VLTs in perspective. Capturing up to \$1 billion in illegal gambling revenues from the underground economy is important, as the finance minister said. On the other side there's legitimate controversy as to whether or not the government itself ought to be running a gambling operation rather than just regulating and taxing it. But the bottom line is that gaming is the fastest-growing segment of the entertainment industry in North America because the public, not the government, has decided it is an attractive entertainment alternative.

Social gambling is a popular activity in Ontario; 84% of the public gamble in one way or another on lotteries, bingos, horse racing, casinos or whatever. The good news is that they do it modestly and spend less than \$10 a week.

When I started the Ontario Lottery Corp in 1975, those who opposed gambling on moral grounds deluged us with dire predictions that ranged from the abandonment of the work ethic to the creation of a nation of problem gamblers. I'm pleased to say after 20 years that none of these predictions came true. In fact, 90% to 95% of all Ontarians do not have any problems with gambling, and of the balance only 1% to 2% are compulsive or addictive gamblers who need help or treatment. The govern-

ment has recognized that need and is setting aside \$9 million in VLT revenues for those programs.

Let's be clear. According to the leading experts in the field of addictions, the type of gambling, whether it's bingo, cards, dice, roulette, horse racing, slot machines or VLTs, is irrelevant to the problem gambling issue. Although colourful and a headline grabber, there is absolutely no evidence to support the claim that VLTs are analogous to crack cocaine or are more harmful than any other form of gambling. Just the way that food doesn't cause compulsive overeating and department stores don't cause compulsive shopping, different gambling devices don't cause compulsive gambling. A person has to be predisposed both biologically and psychologically to become addicted.

This view is supported by independent research, the most recent of which is a study by the University of Windsor which used data collected before and after the opening of the Windsor casino. The study found that the rate or the number of problem gamblers in the population does not increase with the introduction of a new brand of gambling, whether it is casino gambling or VLTs.

That is also confirmed by two problem gambling studies in South Dakota, the jurisdiction which has the longest experience with VLTs, almost 10 years. In South Dakota a follow-up study conducted two years after the introduction of VLTs found that the overall prevalence rate of problem gambling in South Dakota actually declined by 0.5% from the original level two years earlier, notwithstanding continued popularity of VLTs. That ought not to be surprising because we already know that the introduction of a new brand of beer does not increase the number of alcoholics in the population.

Finally, as we also learned from our attempts to eliminate the use of alcohol, prohibition does not work. The only real beneficiaries were the criminals who supplied illegal alcohol.

That brings me to the first point of my submission in the written form, which is, if we're going to raise the kinds of revenues the Minister of Finance is talking about, create jobs and have a positive impact on the hospitality industry and at the same time have an impact on illegal VLTs, then we need to follow the experience of the other eight provinces by putting a modest number of VLTs into bars and licensed lounges instead of simply concentrating them at racetracks and charitable casinos.

My second point deals with the role of government in gambling. In my respectful submission, gambling is not an essential service and government doesn't need to operate it to control it and make certain it's run fairly and aboveboard. Over 93% of all gambling in the world today is owned and operated by responsible, private sector operators who are licensed and controlled by government.

This submission complies fully with the provisions of the Criminal Code of Canada and the legal opinion of the former Chief Justice of Ontario, the Honourable Charles Dubin, which we refer to at length in the written submission. In his opinion, government can implement a program of video gaming in Ontario regulated and controlled by the Alcohol and Gaming Commission, conducted and managed by the Ontario Lottery Corp, and financed and operated by an approved private sector

operator without the expenditure of public funds or any increase in the public service.

As you can see from the illustration of the regulatory framework, the government can absolutely ensure integrity and regulatory control at five different levels:

First, by establishing the overall gaming policy and through the memorandum of understanding with the minister.

Second, by the licensing and regulatory control of the gaming commission, which licenses not only the operator and its employees and all of the site holders but the manufacturers of the machines as well. It also inspects, tests and certifies each machine and seals and controls the computer chip that runs the game. It also tests and certifies the tamper-proof, online computer control system to which each VLT is linked by a telecommunications line which monitors and controls every aspect of every minute of the life of each VLT. That's in addition to the physical security devices, locks and alarms built into each machine.

Third, it can maintain integrity and control by the conduct and management of the program by the Ontario Lottery Corp in overseeing and auditing the gaming operations and activities of the operator.

Fourth, by the careful selection of the private sector operator by an impartial and non-political committee of senior public servants.

Fifth, by the ultimate audit of the finances of the program by the Provincial Auditor.

Why the private sector? The private sector alternative can be cheaper, faster and better than a government-run alternative and doesn't require the expenditure of any public funds or an increase in the public service. The private sector alternative requires no government money. In fact the positive revenue flow to the government in the first six months will be more than \$400 million ahead of the public sector approach which uses government funds and employees.

The VLT program is different from the casino program. In the casino program the government gets 20% of the gross revenue from the casino tax and then shares in the net revenues with the casino operator. For this reason costs of operation can affect the profitability of most of the government's share from casino gambling. That is not the case with VLTs. In the VLT scenario the government's share amounts to 70% of the gross revenues, with 10% going to charities, 10% to the site holder and 10% to operating costs. Under this structure any significant lift to government revenues can only come by increasing overall revenues; that is, by having a more effective and better-operated video gaming format, which we submit has a greater chance of happening through a private sector operation than through a governmental agency.

In Ontario, the operating costs for video gaming are pegged at 10%, and the private sector operator has to meet this target if it is going to recover its investment and make any profit. Whether or not it does, the government still gets its 70% and the charities their 10%, which is the largest share in North America.

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This is not magic or illusion. In doing its job the private sector operator also has greater marketplace

agility and flexibility than a government agency. For example, if it needs to hire a competent data centre manager and the current market rate for someone in that category is \$95,000 a year, the private sector operator can hire the best qualified without having to worry about the hierarchy of civil service pay scales.

Without taking away from the dedication or commitment of its employees, the Ontario Lottery Corp has no experience or core competence in developing and operating video gaming, and there are no economies of scale with its other lottery games. For example, the OLC online network for 6/49 is linked to retail outlets and convenience stores and does not reach the proposed VLT locations which are age-restricted and age-controlled premises. Neither does the OLC staff call on or service these age-controlled premises. In short, the OLC has no VLT operating experience and would have to acquire the same kind of operating resources from the private sector as the private sector operator but without the same operational flexibility.

Finally, and perhaps most importantly according to Canadian Voter Contact, public opinion favours private sector financing and operation of the VLT program. The majority of the public also agrees that a private sector operator would be more efficient and would have no less honesty and integrity than the Ontario Lottery Corp.

In conclusion, I would simply say that public gaming is not an essential service that needs to be operated by government when an acceptable private sector operator can be selected and licensed to do so in a manner similar to the operation of the Windsor Casino.

Those are my submissions, Mr Chairman. I'd be happy to entertain questions.

Mr Flaherty: Thank you, Mr Pollock and your colleagues, for being here today and for the depth of the submission, which is appreciated, the written part of it in particular. It is helpful to us to have some research rather than just speculation.

We heard one submission at least so far this morning about the possible effect of VLs on other charitable gaming activities such as break-open tickets. What comments can you make on that subject?

Mr Pollock: In a marketplace products attract customers because of their unique characteristics. Some compete; some complement. A lot of information has been put out this morning particularly that in Alberta, for example, video lottery terminals had a significant impact on the sales of break-open tickets or pull-tabs.

In the back of your material, and as well in this chart, I would show you that this is the history of gambling activities in Alberta from 1991 through 1992, 1993 and 1994. In 1991, the revenues, the sales from break-open tickets or pull-tabs were roughly \$225 million a year. Casinos were about \$100 million; that is, charitable casinos. What you see happening in this year of 1991-92 is a dramatic decline in break-open tickets and a dramatic increase in charitable casino revenues. People started to go to casinos and stopped buying break-open tickets.

As to whether or not this has any cause and relation to the introduction of VLTs in August 1992, about a year and a half after the decline, I fail to see any connection. My suggestion is that there has been a crossover, a mirror

image, on the increase of casino activity which has cut into the product life of pull-tabs.

If you look at this other dramatic rise of sales in VLTs, you see that bingo operations continue on as normal, the normal lottery operations continue on as normal, other charitable raffles continue on as normal, notwithstanding this increasing spike. To suggest that VLTs caused the decline over here is, I think, being less than honest with the facts.

Mr Crozier: Thank you, Mr Pollock. You've said in your remarks that the type of gambling is irrelevant to the problem gambling issue and that there is absolutely no evidence to support the claim that VLTs are somewhat like crack cocaine. Would you consider Tibor Barsony of the Canadian Foundation on Compulsive Gambling as any kind of an expert?

Mr Pollock: I think Tibor Barsony understands compulsive aspects of gaming; yes, I do. I don't think he's an expert on compulsive gambling or addiction, as someone like Durand Jacobs may be.

Mr Crozier: Is he any less of an expert than you are?

Mr Pollock: I don't know what he's read as far as the material is concerned and I don't know whether he knows much about gaming, but I do know, having had discussions with Tibor Barsony, that his concern is not that there will be an increase in problem gamblers beyond the 1% or 2% but that there is no funding today to deal with the 1% or 2% of the people who are compulsive gamblers who exist in society even before VLTs.

Mr Crozier: So as long as we wash our hands with giving some money to compulsive gambling, those who are concerned about them, that's okay then?

Mr Pollock: Well, I don't think that's the question, whether it's okay or not. I think the solution to the people's problems — and they're significant problems for that 1% or 2% of the people who suffer from problem gambling — is the programs that need to be funded. We have, as a corporation and a responsible member of the gaming industry, for years said that ought to be the function of the gaming industry, that the gaming industry ought to put money forward to deal with the small percentage of people who can't handle gaming, in the same way that responsible beverage companies put some money into programs for dealing with alcoholism.

Mr Crozier: The \$200 million that it might cost to pay for the 20,000 video slot machines that are being proposed to be eventually introduced in the province, is your company prepared to fund that?

Mr Pollock: Yes.

Mr Crozier: Is that why you support the VLTs?

Mr Pollock: No. I've been involved in the public gaming business for 25 years now, since I started the Ontario Lottery Corp and even before that when I was involved in horse racing. I don't think it's a question of whether I want to be involved with gaming, but whether the public does. It's a perfect program for the government that doesn't have to worry about any kind of sunset clause, because when the public doesn't want to play, they stop playing and the games go out of business. It's the public's interest in this as an alternative form.

I would be concerned, as some of the expressions of concern this morning, if we were faced with a large

number of people who hadn't gambled spending inordinate amounts of money on gambling, but all of the statistics show that Ontarians are pretty level-headed. They spend 10 bucks a week on gambling. That's about three beers.

The Chair: Thank you very much, Mr Crozier. We have to move on to Mr Kormos.

Mr Kormos: I wondered where the line earlier today came from, the reference that a new brand of beer does not increase the number of alcoholics in the population. You at least should have been credited with it by the witness this morning.

Mr Pollock: I've been saying that for years.

Mr Kormos: I bet you have. Nobody's going to dispute that. In fact, addiction experts would not say that but would rather say that increased availability or increased accessibility to alcohol is going to increase the amount of alcohol consumption. Do you dispute that?

Mr Pollock: I don't dispute the fact that it will increase the amount of alcohol consumption. I dispute the fact that it will increase the amount of alcohol problems or alcoholics.

Mr Kormos: The problem is that we're in interesting and changing times. Again, I understand there's a whole lot of research out there. I've been trying to get through it myself. There's research, of course, which supports gaming, gambling; there's a whole lot of research that's current in response to this new regime in Canada and in Ontario that has been critical of it.

Frisch from the University of Windsor in a recent survey found that among adolescents 8% were already problem gamblers and a further 9% were potential problem gamblers. The aggregate there is 17%. Frisch argues, and he's supported by Wayne Yorke, a Nova Scotia psychologist, and by Jeffrey Derevensky, who is a psychologist at McGill University in Montreal, based on their respective research, that we have a new generation that has a greater susceptibility to gambling, especially the type of gambling being done with video slots because of the nature of the game and because of — well, some of it's pretty mundane; I mean, the whole video game phenomenon and how young people were tuned into this over the last 15 or so years. Aren't Frisch's numbers — 8% of adolescents already problem gamblers, potentially 9% in addition to that who will be problem gamblers — frightening numbers?

Mr Pollock: I think what they do is underline the need to establish programs of education for people to understand gambling. I think that education programs should start in the schools. Young people are gambling now, whether we like it or not, on activities that are prohibited activities. They're buying lottery tickets, and they're not supposed to do that. I have an 18-year-old son who smokes, and I don't like him to do that either. So all I can do is educate him as to why he ought not to be doing this.

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Part of the \$9 million that's going to be spent, I would presume, would be for educational programs to deter or at least let people understand what problem gambling is about. I'm opposed to problem gambling; I'm opposed to children gambling. That's why we support the idea that

these ought to be age-controlled licensed premises where children under the age of 19 can't play them.

Mr Kormos: Of course, the tobacco industry has spent millions, indeed probably billions, of dollars financing its own research to undermine the research that's demonstrated a link between tobacco use and alcohol, that's demonstrated the addictiveness of tobacco. The tobacco industry also spends millions of dollars, if not billions, on marketing its product, especially at young people, knowing that the earlier you can get them hooked, the longer you've got a customer. Surely you see some parallel.

Mr Pollock: Absolutely none. I don't see any parallel in that at all, because I think advertising tobacco, advertising gambling to young people, is abhorrent to me and to my colleagues. We certainly don't think this program needs to be advertised in that way. We certainly don't have a group of researchers who are conducting work into young people gambling telling us one thing and us trying to persuade people to the contrary. The research is there. There are people, 1% to 2% of the population, who have a propensity to become problem gamblers, and those people have to be looked after. They're already there.

Mr Kormos: But Frisch says that number is changing. He says it could be up to as high as 17% based on the research he's done with young people in 1995-96.

Mr Pollock: I think the numbers are high and based on speculation. I think the better study was the one that was done in Alberta by Dr Jacobs, who indicated there should be a concentration on existing forms of gambling, that children are playing games at school, betting on cards, those kinds of things. You have to go in and talk about this thing. Too many people put their heads in the sand and pretend it isn't there. People are gambling; young people are gambling.

Mr Kormos: But similarly, Gfellner from Brandon said —

The Chair: Thank you very much, Mr Kormos. *Interjection.*

Mr Pollock: That's not her study, though.

The Chair: Mr Marshall, I'd like to thank you and your associates for making the presentation here today.

ONTARIO HARNESS HORSE ASSOCIATION

The Chair: Our next presenter is the Ontario Harness Horse Association, Mr Earl Lennox. Welcome, Mr Lennox. You have the floor.

Mr Earl Lennox: I'd like to thank the committee for making this opportunity available to us to express our support for the introduction of video lotteries as set out in Bill 75.

The Ontario Harness Horse Association is a voluntary membership organization representing all the owners, trainers, drivers and caretakers of harness horses racing in Ontario.

The horse people of Ontario will be impacted significantly by video lotteries. Our purses are tied directly to the amount of money bet. While we support the government's introduction of video lotteries at racetracks, we are understandably concerned that they be managed so as to at least ensure the current stability and the long-term viability of our very important farm-based industry.

The government has recognized through its tax relief proposed in the 1996 spring budget the negative impact on parimutuel wagering of a series of competitive forms of gaming which have been gradually introduced over the past 25 years. That long overdue tax relief assistance may be totally lost if the potential negative impact of video lotteries is not addressed and monitored carefully.

Our industry objective is to maintain horse racing as our core business, and revenues from video lotteries must support this objective. The horse people of Ontario are full partners in this new initiative. We have a surviving economy and we need to stay alive and keep going. Almost all of the tracks are in a borderline break-even position. For the horse people, racing is a business, employment and a way of life. Revenues from video lotteries will be reinvested into farms, machinery, equipment, livestock, feed, bedding, fertilizer and labour by creating and maintaining jobs and generally strengthening local and provincial economies.

Horse racing is the longest-standing form of legal gambling in Canada and it is strictly regulated by both the federal and provincial governments. Racetrack customers have made a conscious decision to seek out gaming as a socially acceptable type of entertainment.

Racetracks provide a secure environment for the introduction of video lotteries. Managers have the experience and technological expertise from parimutuel wagering to work cooperatively with government agencies in the setup and operation of video lotteries.

We are you. We are not gaming management teams from Las Vegas or Atlantic City, nor are we equipment suppliers from another state. We are an Ontario-driven industry. We are producing horses that are competitive anywhere. We have been producing trainers and drivers for decades who are competitive anywhere. Harness racing is one of the few international sports where Canadians excel and dominate.

We are looking forward to the introduction of video lotteries as a method of broadening our base of fan interest and sustaining and possibly growing our economic foundation.

The Chair: Thank you, Mr Lennox, for leaving time for more questions than we usually have. We have approximately five minutes per caucus.

Mr Crozier: Good afternoon, sir. You know Tom Joy, I'm sure.

Mr Lennox: Yes.

Mr Crozier: He says that he looks at the addition of VLTs as another form of diversification. I quote him when he says, "I always insist that our core business be racing. With every new possibility, my first question is, what is it going to do for our racing?" Do you share that view?

Mr Lennox: Certainly.

Mr Crozier: And what it's going to do for racing is it's going to give you added revenue which you will then put towards further development of the racing industry.

Mr Lennox: Our revenue is purses based on parimutuel handle. The horsemen's contracts with the various tracks in Ontario generally cover a percentage of split revenue. We're optimistic that we'll get a similar split on the revenue, whatever it may be, from the video lotteries

to what we're now getting from the parimutuel commissions. Our concern is that with the current proposed share rate, we may be seriously impacted, because in some jurisdictions I believe the cannibalization effect is as high as 35% on the parimutuel handle.

With the introduction of simulcast theatres in the last two years, the parimutuel total handle went up in Ontario in 1994-95, but it stabilized this year, and if anything, it's falling backwards. We went through years where we weren't gaining, where we weren't keeping up with the cost of living and we weren't keeping up with inflation. Suddenly we got a shot in the arm for the last two years, which has now levelled off, sagged a bit perhaps, and we're hoping that the video lotteries, if the proper split is made, if we get our contracted share, will help us to maintain our status quo at least.

Mr Crozier: Will you share this increased revenue if you get it? Will you share that with the horsemen?

Mr Lennox: Certainly. At most tracks it's a roughly 50-50 split on the handle.

Mr Crozier: Oh, on the handle. But will you share the revenue from video lottery terminals with the horsemen on a 50-50 split?

Mr Lennox: It's our understanding that if Windsor Raceway takes in \$100 worth of revenue, we'll get roughly 50% of it. The current contract with Windsor is 52%.

Mr Crozier: Thank you. Will it be shared with the horsemen, I guess I should have asked. This question of cannibalism: You make the statement very early in your submission that you support the introduction of video lottery terminals as set out in Bill 75. So that means that you unequivocally support video lottery terminals in licensed establishments?

Mr Lennox: We support them in racetracks.

Mr Crozier: Ah, that isn't what you say here. You say you support the introduction of video lottery terminals as set out in Bill 75. I just want to make the record clear, that's all. So you don't necessarily support them going into all licensed establishments?

Mr Lennox: We understand that the plan is to do that down the road, but hopefully there will be some revisitation of how it works out with regard to racing as to how soon they may be introduced in other areas.

Mr Crozier: We hope so too, that saner heads will prevail. My objective, sir, is kind of working backwards. I appreciate the problems the racing industry has had. Windsor Raceway is in an adjacent riding to mine but certainly has an effect in the agricultural area in my riding, and we're concerned about the harness racing and the horse racing industry in the province. So we kind of are working backwards in that we don't support the introduction of this form of video slot machine in all licensed establishments, and I just wanted to see if you shared some of that position with us.

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Mr Lennox: I suppose the horsemen have to go along to a certain degree, inasmuch as it isn't a perfect world or a perfect province, and this is presented to racetracks first and other establishments later. We're hoping to get it in the racetracks, get it working to our satisfaction and then hopefully it'll be revisited to see if it is necessary to

put it somewhere else or if the economy can sustain it somewhere else.

Mr Kormos: Thank you, sir. You probably know we had representatives from the racetrack industry here this morning saying much the same thing as you just did. I'm not suggesting that anybody compared notes before you got here but —

Mr Lennox: I just got here.

Mr Kormos: — I understand the issue of the horse race industry; it has suffered a decline across the board and apparently across North America, but certainly in Ontario. I'm from the Niagara region with the Fort Erie track. It's interesting historically that, as you know, at least the Ontario Jockey Club initially opposed casino gambling in the province, and I was ad idem with them at that point because they were concerned about casino gambling taking away even more dollars from what appeared to be a game that was slowing down a little bit.

Professor Garry Smith from the University of Alberta, described as a gambling specialist but with a lot of research under his belt, identifies horse racing, track betting, as once a favourite of gamblers, considered now somewhat sedate and by some old-fashioned. He contrasts that with video slot machines, electronic slots, because he talks about the speed at which you can play. You can complete a game cycle in about one and a half seconds once you get the feel for popping in the loonies or the toonies or the \$5 tokens. He says that's what gamblers want, this tingle of excitement all the time when you're playing and that they control the speed of the play, which you don't in most other forms of gambling.

It was suggested that the slots at a racetrack would be a nice way for people to spend that 20 minutes between races. Is this how you envision people playing the slots at a racetrack?

Mr Lennox: I certainly hope that people who are interested in playing slots will come to the track, and because they're going to be installed in the same grandstand building facilities, that those people will become interested in horse racing. Unfortunately we're going to lose a few customers the other way. But I was talking to a gentlemen from Maryland on Monday who was telling me the problem they have at Dover Downs, where the cut is extremely high in favour of the track and the horsemen really: It's in a separate building. The people play the slots and then have to go over to the track, as it were. He said, "Whatever you do, if you get them installed, hopefully they'll be in the same building, because it's a significant improvement." But at Dover the purses have gone up dramatically. A year ago at the winter meet of 1995, the horsemen were racing for an average purse I believe of \$11,000 a day and now they're racing for \$75,000 a day.

Mr Kormos: We know that gambling addiction is historical. There are horse gamblers who are addicts, and you as a person involved with the industry could probably spot one almost a mile away as she or he approaches the window. They're almost identifiable in that regard. The plethora of evidence suggesting — I understand the problem that the horse race industry has in the fact that you've got to find some other sources of revenue to bolster an industry that doesn't have the better support it once had.

Mr Lennox: The only support it once had.

Mr Kormos: That's right. Are you not concerned about the addictiveness of these electronic slot machines and the prospect that we're going to evidence, witness a far higher incidence of gambling addiction as a result of this universal accessibility to slots, compounding how many times whatever level of gambling addiction there is at the horse track? Aren't you concerned about this as a member of the community and as a family person?

Mr Lennox: Certainly I'm concerned. I've got daughters 13 and 16, but to the best of my knowledge neither one of them uses drugs and they don't engage in sex where they might get AIDS and hopefully they won't play lottery machines until they bet me broke.

Mr Kormos: And I hope they don't either.

Mr E.J. Douglas Rollins (Quinte): Thank you, Mr Lennox, for coming today. I appreciate your interest on the horse end of the track. The number of tracks in the province of Ontario over the last few years has dropped. There have been a few more closures, quite a number of horses less in the province today in the racing circuit than there were eight or 10 years ago. Do you feel that when father and mother come to the track — I think that racetrack people as a whole quite often assume racing as a family sport of entertainment where the father and mother both come to the track, and father probably does a goodly portion of the bet — do you think that mother might play the machines a little bit oftener than father would or overtake from the person betting on the horse, or he's not going to give that up? I'm sure that person who's diligently into that program isn't going to run off and play the machines for the next six or seven minutes before he can make another wager.

Mr Lennox: I think observations have been, where slots or video lotteries have been introduced, that there is a far greater percentage of women playing the slots than there are men. Again, this gentleman from Maryland I talked to on Monday said he was by far in the minority at the Dover Downs site. Mostly adult women were playing the slots and the men tended to be, as you suggest, gambling on the horse races.

Mr Rollins: I think it's complementary. The horse people should appreciate that you people have got the foresight to see a way of saving an industry that was "the" industry at one time in Ontario which has fallen short of being able to attract all those people to the racetrack to do all their wagering there.

Do you continue to think that by allowing the machines only at the top four grades of tracks — according to the bill, it doesn't allow them into all racetracks in the province of Ontario, only the top-rated four categories, I believe.

Mr Lennox: There basically aren't any other than one- or two-day fairs where they carry on parimutuel racing. The smallest number of dates given out is to Clinton Raceway, which I believe races 12 Sundays in summer, and it's considered a class 4 track. Otherwise you'd get down to places like the Markham fair that would maybe have two or three days of parimutuel racing. I don't believe there is any other place in Ontario that has more than three days of parimutuel racing unless they're in —

Mr Rollins: Belleville does. We have I think about 28 days of racing down there.

Mr Lennox: Yes, but it's a class 4 track.

Mr Rollins: But it wouldn't be one that is eligible to get machines?

Mr Lennox: Oh, yes. It's supposed to get 70-some machines, I believe.

Mr Rollins: Oh, is it? That's what's scheduled?

Mr Lennox: Yes.

Mr Guzzo: Mr Lennox, I'd like first of all to touch on the employment issue and the people you represent. First of all, there's no extended-meet racetrack in Ontario where your organization does not negotiate for the people who put the show on, ie, the horsemen, correct?

Mr Lennox: That's right.

Mr Guzzo: So everybody you represent has a collective agreement with track management, and you're then in a position — I'm doing this for you, Mr Kormos; you'll appreciate this — to guarantee the people you represent a fair share of whatever income there is.

Secondly, the profile. I'm from eastern Ontario. The people you represent in eastern Ontario live on farms; they live in small-town Ontario. Indeed in western Quebec we look at the same situation. The people you represent are caretakers or people who make their living in this industry, is that not correct, as well as the owner?

Mr Lennox: I do myself. I do shit every morning.

Mr Guzzo: On your farm how many people from the rural community do you employ?

Mr Lennox: I have one person full-time and two part-timers.

Mr Guzzo: I don't know what the situation —

Interjections.

Mr Lennox: I had a shower before I came down, Peter.

Mr Guzzo: I don't know what the situation is in Mr Crozier's or Mr Kormos's area, but on the farms of eastern Ontario we would find one, two, five, up to seven or 10 employees. What percentage of the horses that put the show on would be trained at the track as opposed to on the farm at home? Any idea?

Mr Lennox: In the Ontario Jockey Club racing program, I think on a given night at Woodbine or Mohawk 60% of the horses ship in from other locations, the odd one comes from Elmira and Hanover and Flamborough, but only 40% of the horses that race at Mohawk on a given night are actually stabled in the barn area there.

Mr Guzzo: That would be lower at a track like Rideau-Carleton in Ottawa or at Elmira itself, correct?

Mr Lennox: That's right, yes. For example, in Belleville I think Jack McDonald told me there are only 35 horses actually in training, but they require 80 to put on the races every Friday night.

1400

Mr Guzzo: It's a trickle-down effect of the employment factor that this government is trying to protect.

Mr Lennox: Many of those people aren't really employable in other professions either.

Mr Guzzo: That's a very good point. They've been doing this all their lives and that's what they know. The animal is what they know.

Mr Lennox: That's right.

The Chair: I thank you very much, sir, for your presentation here today.

B'NAI B'RITH CANADA

The Chair: Our next presenter is B'nai B'rith Canada, Mr Ruby Richman. Welcome. If someone is to assist you in making the presentation, Mr Richman, you could identify them for the purpose of Hansard.

Mr Frank Dimant: We need a clarification. B'nai B'rith Canada will be represented by David Colodny, our national treasurer and chairman of our financial management cabinet, and myself, Frank Dimant, executive vice-president of the organization.

Just a quick word on B'nai B'rith Canada. To many of you we're a known entity. We're a national volunteer organization and we specialize in fighting anti-Semitism, bigotry and hatred. We also provide a tremendous number of community services across the province.

Mr David Colodny: Charity sweepstakes, charity lotteries, bingos, charity casinos, break-open tickets and raffles in an evolutionary form have been part of Ontario culture for the past 26 years. More than \$2.5 billion is wagered annually at these charity gaming events. This form of charitable gaming, highly regulated by the government, has become a traditional method of raising funds by social service organizations for charitable and religious purposes.

Charities have become dependent on the funds raised through charity gaming, especially in today's economic climate where to a large extent the ability to raise funds from traditional fund-raising programs has diminished.

With the establishment of the Ontario Lottery Corp in the 1970s, and especially since the establishment of the Gaming Control Commission and the Ontario Casino Corp in 1993, there has been a steady and progressive erosion of the rights and abilities of charities to raise funds from these sources in the face of competition by government-provided gaming.

The introduction of the 20,000 video lottery terminals, to be distributed in racetracks, charity casinos and licensed establishments, will further directly compete with charity gaming, thereby once again diminishing the ability of charities to fund-raise from this gaming.

To offset this inability to compete, charities should be able to participate in the income from VLT-derived revenue, both as a replacement for lost revenues and as a replacement for the lost potential sources of gaming revenue. Not to share revenue with the charities will result in a greater dependency by gaming charities on the general government funding which could lead to the collapse of the vital, volunteer-driven social services sector.

B'nai B'rith Canada recognizes the need for consecutive Ontario governments to participate in gaming, but that government's entry into gaming should be based on a partnership with the charitable sector which has invested a great deal of time and money in developing the industry. The introduction of VLTs should be viewed as a partnership with the charitable sector.

Mr Dimant: We have three recommendations that we'd like to present to your committee, the first recom-

mendation being that charity gaming is part of Ontario culture and has been accepted and supported as such by the public and local and provincial politicians. Charities have invested heavily in this emerging industry and they have earned the right to continue operating free from interference and unfair competition. Our recommendation is that VLTs should be introduced into charity casinos and bingo halls owned and operated by charities for charities.

Second, the inability of gaming charities like the foundation to compete with government-provided gaming restricts them to providing limited, unpopular amenities. If charities are put at a competitive disadvantage by the encroachment of government-provided gaming, funding from this new source of gaming revenue should be channelled in part to charities. Recommendation 2: A portion of the funds derived from VLTs should be distributed to gaming charities to enable them to continue their charitable work.

Finally, many charities have invested large amounts of money in resources and personnel to develop their charitable fund-raising programs. In the event that the province proceeds with the introduction of VLTs into the province, then those charities which have pioneered gaming events in this city should be grandfathered into a situation that would allow them to continue either to operate or to participate in revenue from VLTs similar to racetracks and licensed establishments in a competitive way to ensure their viability and maintain their community volunteer service programs. Our final recommendation is that income derived from VLTs in charity casinos and charity bingo halls should be shared on a 50-50 basis.

Those are our recommendations.

Mr Kormos: Interestingly the government, because it's putting 20,000 slot machines out there in every place but casinos — that's what this Bill 75 is all about. The government made a commitment to the horse race industry, which I'm confident it'll fulfil, because the horse race industry was lobbying, rightly so, about the cannibalistic effect of first casinos and then wide-open, free-ranging slots as we have proposed here. So the government took care, at least as they saw it, of the horse race industry, bringing them on side, which is why now the horse race industry, among other things — and we've had spokespeople here several times today — has endorsed slots, but they want them to be at the racetrack.

The government has also committed, as you probably know, 2% of revenues to pay for gambling addiction programs, and that has helped to soothe the concerns of people who operate gambling addiction programs, people whose livelihood is derived from there. Similarly, the government, as you well know, has made a commitment to giving charitable organizations a piece of the action, a piece of the take.

We've been concerned, I think all of us, at the lack of model. There's been a dance in the fog because nobody's been able to come here to look at the proposed models as to how that's going to be achieved. Is it going to be done, for instance, at a central level? In other words, is it going to be determined here at Queen's Park? Is it going to be done at a regional, local level? I come from smaller-community Ontario, as do I think most of the

people on this committee. From community to community, various charitable organizations are more or less adept at fund-raising, depending upon the amount of volunteers they can muster and upon the economies in those communities. Should there be a precedent? Should there be historical level of participation based on regional historical level of fund-raising, as compared to some sort of distribution?

What are the sort of models you've had in mind? Because we haven't had anything to work with. The government hasn't given this committee any tools to talk about the model of sharing funds with charities.

Mr Dimant: Certainly we talk about precedent in our brief and we think that's very important. While we appreciate the wonderful work that the Ontario Trillium Foundation does, we would be aghast if we have a creation of another Trillium fund for this purpose. I think the government has to recognize the grass-roots people of this community, and those are the service organizations, the religious organizations who plow in the fields. They've worked, they've endeavoured even in this industry, and we're concerned that at the end of the day there's going to be a superstructure imposed and we'll need to have at least a few grantsmen directors on our staff to enable us to get a grant.

I don't think this is what we want to see, speaking for certainly a segment of the people of Ontario. We would like to see history taken into consideration. We'd like to see an understanding of the local situation by the government. There has to be a model that will identify those organizations that have worked so tediously in this field, whether it's — I can mention Variety Clubs and CNIB and ourselves and others, who have pioneered. I think they have to be part of the equation when this is all determined, and the regional and the local people who depend on it, because certainly there is no doubt that the VLTs will take away money from the charitable sector. We have to find a way to give it back to the charities to enable them to carry on their work so it'll be less of a burden on the government.

Mr Kormos: Can you propose some sort of models that would synchronize a provincial perspective? Down in Welland there's Lions International, but there's also a Lions Club in Welland that does good work, and it's not a big club, it's not a big detachment or unit. How does —

Mr Dimant: I think there has to be an examination of the fund-raising that's done right now on a regional level, not Lions International but the local Lions Club. How much do they get out of the gaming sector right now and how much are they going to tentatively lose from this kind of introduction of VLTs? They have to be compensated so that their work continues. I would say that's across the board we have to look at that. The main purpose is to help the citizens of Ontario.

Mr Kormos: You of course were here when the last spokesperson for the horse racing industry spoke. What about the inevitable competition, notwithstanding the numbers, 2%, X%, that are proposed now? What about the inevitable lobbying and politics about the gambling addictions people wanting more than 2%, you competing with the horse race industry in terms of percentages? How is that going to be resolved?

Mr Dimant: I think at some point there'll be arbitration, but we're really concerned that in all of this give and take and tugs of war, the charities are the ones that have fared the worst, charities and religious organizations that have been in developed bingo business and so on, taken over by commercial operators. The charity casinos, which were started by charities for themselves, have become run by operators. We're concerned that the voice of charities not be lost in this so that it doesn't become a tug of war just between the racetrack owners and the gaming addiction foundation, but that we remember that the charities, the grass-roots people also have a portion, a stake in this. I want to come back to that.

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Mr Hudak: Thank you, gentlemen, for your presentation. I think the area I come from, again a small town like Mr Kormos talks about, Niagara South — there's one community called Fort Erie. Maybe you've been there before. It has a beautiful racetrack that employs, indirectly and directly, between 3,000 and 4,000 individuals. At the same time, we have a booming bingo industry and some very successful charities that do outstanding, and our own Lions Club that I could brag about for a while — I was at one of their dinners recently. Outstanding work from the Lions Club.

I think what I hear from different sectors, whether it's the bingos, the charities, those that run the Monte Carlos and the tracks, is they'd like some sort of equal playing field. There's a movement certainly in New York state to go to a big casino over there, which would devastate our charities unless we do something about that; it would devastate the track unless we do something about that. So I think the government has made, and I think you agree, some substantial moves towards improving all sectors, and specifically to charities. I think you mentioned video lottery terminals and revenue at the charity event sites. I think you're also on record, gentlemen, for VLTs at bingo parlours. Is that correct?

Mr Dimant: Yes, charity bingo halls. We're very specific, because we have to keep emphasizing that there's a difference between commercial operators and charities. So in those charity halls, they should have a right to the VLTs. I think for too long the hands of charities have been tied. Competition is okay; it's fair. But don't tie the hands of the charities all the time, and that's what's happened heretofore. We hope this time around at least you'll be listening to us and you'll be looking at grandfathering and you'll be looking at charities that are in the field and you'll be looking at charity bingo halls and giving them a fair break.

Mr Hudak: So in the way this should roll out, my understanding of what I read in the budget and such was initially at the racetracks, which you've discussed, and charity event sites. Then, down the road, the government will make a reasonable assessment of where it should go into liquor-licensed establishments, and you think we should add charity commercial bingo parlours and halls as well.

Mr Dimant: I think charity halls should be right after the racetracks or simultaneously with the racetracks. Why not let charities benefit at the same time?

Mr Hudak: Finally, in terms of the distribution mechanism for the charities, your advice, gentlemen, was

something more close to a local level as opposed to centrally controlled.

Mr Dimant: That's correct. I think there's a possibility even some charities that are on a provincial level, you can have it two-tier, but it's got to be charity-driven; it's got to be the people, the grass roots of this community. Yes, let's get it back to the regional areas; let's get it back to the hands of the people.

Mr Hudak: If you look at the whole gaming industry, competition comes from New York state, competition probably comes from Michigan, a movement of the last government towards the lottos, the scratch and win, the Sport Select etc — money that went I believe directly to the government as opposed to charities. What you've heard in the budget and the progress this committee has been making, is that substantial improvement for the charities in Ontario?

Mr Dimant: I just have to say for the record, our biggest competitor to charities was the government itself. It wasn't the Americans. Charities, those of us that are more aggressive, would be pleased to compete with the government, if only you'd untie our hands a little bit. So there's movement now, but I think keep untying the hands.

Mr Crozier: Could you tell me, do you favour video lottery terminals in licensed establishments?

Mr Dimant: If you ask the question we debated at length before we presented, do we favour it altogether — that's also a fair question — we recognize the inevitability of it happening.

Mr Crozier: No, no, let's assume that these committee hearings are going to do something. If this government hears people saying they shouldn't be in licensed establishments, let's assume — I know it's a stretch, but they might listen. Where would you stand on the issue?

Mr Dimant: We're for restricting it in specific gaming areas. We are not in favour of it going all over the place, being readily available at sites where all sorts of people can be tempted, rather at destination sites where people knowingly go to gamble, but certainly not in all licensed facilities.

Mr Crozier: Thank you for your forthright answer. When you, under recommendation 3, suggest that the income derived from VLTs in these charity casinos and charity bingo halls, which you'd like to recommend, be shared on a 50-50 basis, I just want to clarify. Mr Pollock, who appeared here a short time ago, said that the government's share amounts to 70% of gross revenues. So what you're saying is — you want to share 50-50 with whom?

Mr Dimant: With the government, at the end of the day.

Mr Crozier: With the government. So you don't agree with this 70% of gross revenues going to the government and 10% going to charities.

Mr Dimant: I think Mr Pollock speaks for his industry.

Mr Crozier: I'm using those statistics, and you'd prefer to see it more on a 50-50 basis.

Mr Dimant: That's right.

Mr Crozier: But of course we all understand, if we believe what's in the budget, that the government can't afford to do that.

Mr Dimant: We believe that the government may take note of what some of our organizations are saying and perhaps at the end of the day sit down and negotiate a fair percentage with the charities. So I think we're ready for negotiations and I think we have to be heard.

Mr Crozier: I think we could even support your position in that Mr Harris said in fact that he wouldn't even move on this type of gambling before all sectors were consulted. Have you been consulted on this?

Mr Dimant: We believe this is part of the consultation process and will accept it as such.

Mr Crozier: Okay, thank you. I won't pursue that any more.

The Chair: Thank you very much, gentlemen.

RACETRACKS OF CANADA

The Chair: Our next presenter is Racetracks of Canada, Mr Roland Roberts. Welcome, Mr Roberts.

Mr Roland Roberts: Good afternoon. I have some material here for distribution to you.

The Chair: If you'd provide that to the clerk, she will distribute it to the committee.

Mr Roberts: Thank you, Mr Chairman and committee members, for this opportunity to present to you today the concerns of our 16 Ontario member racetracks with respect to the imminent introduction of video lotteries at Ontario racetracks under the authority of Bill 75.

Racetracks of Canada is a national service association whose membership consists of 31 thoroughbred and standardbred racetracks which are located in each of the provinces of Canada in which horse racing is currently conducted. As stated previously, 16 of these racetracks are located in Ontario. The mandate of Racetracks of Canada is to further the interests of the parimutuel horse racing industry in general and the interests of racetrack operators in particular.

My mandate on this particular occasion is to make representation on behalf of the 16 Ontario member racetracks but, I must emphasize, not to express the independent views of any particular racetrack operator.

We are most appreciative of the government of Ontario's recognition of the significant contribution which the Ontario horse racing industry makes to the provincial economy. This fact was acknowledged in the recent provincial budget, which, by reallocation of parimutuel tax revenues, provides the horse racing industry with the means to renew its financial viability and to more confidently plan for future developments. This is of paramount importance to enable the industry to improve its competitive position in the entertainment and gaming environment.

The opportunity which results from the government of Ontario's plan to initiate the introduction of video lotteries at racetracks in an important aspect in the future development of the horse racing industry. Through the auspices of the Ontario Horse Racing Industry Association, better known as OHRIA, the industry enthusiastically supports the implementation of video lotteries at racetracks.

We, the racetracks, are confident that our experience in the field of gaming, our awareness of and proven ability to meet and indeed surpass the need for maintaining the

highest levels of integrity and security, will ensure that government's concerns and expectations will be more than adequately met. In addition, the industry is familiar with the requirements of working within a tightly regulated environment. It is now subject to the supervision of the Ontario Racing Commission, the Ontario Liquor Licence Board and the Canadian Parimutuel Agency, which has jurisdiction over the systems and controls designed to safeguard the betting public by ensuring the integrity of the wagering or betting systems.

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Racetracks have the synergies and infrastructure to facilitate the implementation of a video lottery network which will make this new gaming device available throughout the province in controlled and attractive venues. We believe that for government and the racing industry to properly evaluate the effects of video lotteries, racetracks will require the opportunity to operate video lotteries in a controlled and exclusive environment for an extended period of time, following which joint consideration could be given to a further expansion of the program.

We believe that by working in a cooperative partnership, the government of Ontario and the horse racing industry can achieve results based on sound business, economic and moral principles which will achieve the best possible returns to government and a reasonable return to the racing industry.

As much of the industry is agriculturally based — namely, through breeding, training and boarding farms, as well as the many racetracks located in rural communities — its contribution to rural Ontario is of major significance. Even those racetracks residing in metropolitan areas provide a significant beneficial effect to the agricultural community through the demands for veterinary services and feed and bedding for horses.

For your information, the Ontario horse racing industry currently provides an estimated 40,000 direct and indirect full- and part-time jobs to residents of Ontario, with an annual payroll of almost \$1 billion. It is the third-largest agricultural sector in the province of Ontario, with expenditures of approximately \$578 million.

The stated objective of the horse racing industry is the preservation and growth of the live racing product in Ontario. Thus, revenues generated through the introduction of video lotteries in Ontario will be reinvested into the Ontario economy and local communities. This will provide a cyclical effect in that increased purses will attract new horse owners and encourage those already in the business of horse racing to increase their already substantial investments, thereby increasing the demand for more horses of better quality. This, in turn, will encourage breeders to expand and upgrade their breeding base. More and better quality horses will, in turn, provide a more attractive and competitive product which will result in increased public interest, improved attendance and wagering levels, and increased revenues to the government.

The industry perceives each racetrack as having the potential to become a sports/entertainment/gaming complex designed to meet consumer demands and expectations. We believe that racetracks can fulfil this require-

ment and become consumer-driven destination centres, with the experience and built-in safeguards and facilities which other premises may not enjoy.

While the industry is concerned with enhancing its position within the sports/entertainment/gaming marketplace, it is cognizant of its moral responsibility to the community. In that regard, horse racing has provided, and will continue to provide, financial support to Gamblers Anonymous, or more properly the Canadian Foundation on Compulsive Gambling. The industry, through its advertising campaigns, has always emphasized the sport and entertainment value of its product and has seldom promoted directly the gaming aspect, which is deemed to be a matter of customer choice.

Racetracks are also prepared to assist charitable organizations achieve their funding requirements and are willing to work and cooperate with government and charitable organizations to achieve this end. Racetracks have developed over the years successful working relationships with many charities, such as Variety Village, the Canadian Association of Riding for the Disabled, the Multiple Sclerosis Society and other charities which neighbour each racetrack within its local community.

Racetracks of Canada, Ontario division, is prepared and willing to participate in discussions to achieve an objective which will be in the best interests of the government, the consumer, charitable organizations and the horse racing industry. Thank you for your attention.

Mr Guzzo: Sir, thank you very much for your presentation. I have to tell you that I am one who has a little difficulty with this segment of the industry. I happen to think that one of the reasons you people are in the difficulty you're in today has been brought about by your own management and less by competition from other forms of gaming.

But I read with interest on page 4 of your submission when you refer to the "40,000 direct and indirect full- and part-time jobs to residents of Ontario" — if anything, I think you might be somewhat low — "with an annual payroll of almost \$1 billion." But if you skip to the next paragraph, in my opinion that's about as important an issue in this as we will deal with, where you say, "As much of the industry is agriculturally based, namely, through breeding, training and boarding farms, and many racetracks are located in rural communities, its contribution to rural Ontario is of major significance. Even those racetracks residing in metropolitan areas provide a significant beneficial effect to the agricultural community," driving home the fact that \$578 million is the estimated net section of the agricultural sector.

The people in the backstretch, the people at the racetracks who either live there and work on a full-time basis or work on the breeding farms or the training farms and come in there are the people I think we have to be most concerned with, mainly because I don't think they have an alternative. The people who are working at the tracks, whether it's the students or housewives, as a second job, who punch the tickets, who sell the tickets, and indeed the full-time people managing and servicing the racetracks are capable of being employed elsewhere if the tracks were to close tomorrow. But that agricultural community — do you know of any place where this sector could be employed in small-town Ontario, rural

Ontario if this business were to disappear from the face of Ontario?

Mr Roberts: I believe your assessment is quite correct. No, they wouldn't be absorbed. I think the racing industry plays a very significant role in the maintaining of many of the farms in rural Ontario because racing is an adjunct to the main farming industry and in many cases I believe is supportive of the farming community.

Mr Guzzo: I asked Mr Lennox this. He felt that every track in Ontario that has an extended meet has a collective agreement with either the thoroughbred horsemen or the harness horsemen. Is that your understanding? Does each and every track that you represent here in Ontario have a form of a collective agreement?

Mr Roberts: It's not referred to as a collective agreement as that parlance is usually understood, but yes, there is a letter of agreement or a contract with each of the horsemen's associations who abide on that track.

Mr Guzzo: There's no track where the horsemen are not represented by some agency?

Mr Roberts: That is correct.

Mr Guzzo: I appreciate it's not a collective agreement, but I use that term for my friend; he understands those things.

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Mr Crozier: Good afternoon, Mr Roberts. Do you support the introduction of video-type slot machines in licensed establishments beyond racetracks?

Mr Roberts: We would not recommend that they be introduced at licensed sites.

Mr Crozier: As part of your submission, down near the bottom of page 3, you said "an extended period of time, following which joint consideration could be given to a further expansion of the program." What did you mean by that?

Mr Roberts: The assessment as was raised by the gentleman who preceded me, looking at the charitable organizations, reaching out into the charitable halls, if it's deemed in the wisdom of the government to extend that into licensed premises, further expansion — I should have pre-empted this part of my answer — looking at an extension within the racetrack community and increasing the number of terminals available, there certainly is some concern on the part of the racetracks that the allocation as presently prescribed — and we understand the reason for it — will create some difficulties within the racetrack community, living within that structure, and we anticipate the demand will justify an increase in those numbers.

Mr Crozier: We all understand that the only real reason I suspect the government's introducing these video-type slot machines is because of its need for revenue, because a year or so ago the two top men on the government side, Premier Harris and Mr Eves, objected to them, up until this point. If we assume that they need the revenue, I would like it clarified. What you're saying is that perhaps the numbers of VLTs could be expanded, but that it still should be done within the confines of a strictly controlled area.

Mr Roberts: That is quite true.

Mr Crozier: I appreciate that because one of our concerns — although we have concerns with video slot machines all together — is the accessibility and the need, if they're going to be introduced, to initially introduce

them in very controlled circumstances and that in the long run they should stay in those controlled areas.

Mr Roberts: We certainly support that view.

Mr Crozier: We too support the viability of racing in the province of Ontario and we know what it means to our agricultural areas. I come from a rural riding. The first horse race I ever went to I was working in the ticket room where you had to balance all the tickets, but then we got modernized and went on to these machines that spit out the tickets and balance them. But in any event, I appreciate your comments in that respect.

Mr Kormos: At the end of a race night, granted admissions to a track are a number that's looked at by the management of the track, and food sales and beverage sales — there's a little bit of money to be made there — but ultimately, at the end of the day, the number that's of most interest to the racetrack is the gross amount bet, isn't it?

Mr Roberts: It's significant, because it's important to the horsemen as well as to the racetrack.

Mr Kormos: That's where the money comes from, isn't it?

Mr Roberts: Yes.

Mr Kormos: It's not the admissions.

Mr Roberts: They all certainly contribute.

Mr Kormos: But the admissions aren't the primary source of revenue, are they?

Mr Roberts: No, they are not the primary source.

Mr Kormos: It's the total amount bet, right? That's what the business is all about.

Mr Roberts: No, I would —

Mr Kormos: The more that's bet the more profitable the business is. Is that fair?

Mr Roberts: I'll wait to see where you're leading.

Mr Kormos: Let's start talking about the Ontario Lottery Corp, because you may or may not have been the beneficiary, like so many other Ontarians, of the things they deliver with your junk mail. One came down to my house on Bald Street in Welland the other day that if I went and bought one scratch and win ticket I'd get a second one free, and there was a second one too. That was similar to the sort of stuff that the Ontario Lottery Corp has been doing for a good number of years. They do junk mailing to households, they do ads encouraging people to buy lottery tickets. You're familiar with that, aren't you?

Mr Roberts: Oh yes.

Mr Kormos: Because that's how they make their money, isn't it?

Mr Roberts: But if you're alluding that that's what racetracks do —

Mr Kormos: That's how they make their money, isn't it, the lottery corporation?

Mr Roberts: Yes.

Mr Kormos: By encouraging more and more people to buy lottery tickets.

Mr Roberts: Correct.

Mr Kormos: Encouraging more and more people to gamble, right?

Mr Roberts: Yes.

Mr Kormos: It's not rocket science. If it was, I wouldn't be capable of it.

Mr Rollins: Well said.

Mr Kormos: But that's how they make money. I saw an interesting ad recently; I think it was Woodbine. I appreciate you qualified your comment that seldom does the race industry promote gaming or the gaming aspect of it, because it is a little unseemly, right? There was an ad — again it was the Eaton's catalogue people — and they were all frolicking over at the Woodbine track and they were talking about betting this horse and betting that horse and who won and who didn't. Do you recall that ad?

Mr Roberts: I didn't see it.

Mr Kormos: But the fact is that once you get them there — you have better-friendly programs, don't you?

Mr Roberts: Certainly.

Mr Kormos: And that's to encourage neophytes to not be afraid of the window, right? That's why you have better-friendly programs. You want neophytes to feel comfortable reading that program and picking the winner, don't you?

Mr Roberts: What's your point?

Mr Kormos: My point is I want to know whether you want bettors, neophytes, to feel comfortable and to bet at that window.

Mr Roberts: We want people to feel comfortable coming into a racetrack. It's one of the areas that we have worked very hard at in terms of making our people more friendly in terms of dealing with the customer.

Mr Kormos: You want them there so that they'll bet once they get there.

Mr Roberts: If that's their choice.

Mr Kormos: You want them there so that they'll bet once they get there. That's why you've got better-friendly programs.

Mr Roberts: If that's their choice.

Mr Kormos: But that's why you have better-friendly programs, isn't it?

Mr Roberts: It's the same reason as you go to a hockey or baseball game or almost any concert, you have a program, and they're friendly. It's true within any operation.

Mr Kormos: So far betting at a basketball game — far be it from me to suggest it'll always be illegal in this province — remains somewhat illegal.

You've indicated that you don't support these slots helter-skelter in every community in every neighbourhood. I trust that's because of the potential social danger that exists, the increased exposure to them. You're going to have greater levels of gambling addictiveness. Is that fair to say?

Mr Roberts: I think unless you're aware of something that I'm not, we aren't discussing slots; we're discussing video lottery terminals, which are very —

Mr Kormos: You call them VLTs, I call them slots.

The Vice-Chair (Mr Ron Johnson): I'm sorry, Mr Kormos, the time has expired. Mr Roberts, I want to thank you on behalf of the committee for your presentation.

ONTARIO HOTEL AND MOTEL ASSOCIATION

The Vice-Chair: Our next presenter will be Mr Rod Seiling from the Ontario Hotel and Motel Association. Mr Seiling, welcome. If you could please identify yourself.

You have 20 minutes for your presentation and you may wish to leave some time for some questions at the end.

Mr Rod Seiling: Thank you, Mr Chairman. My name's Rod Seiling. I'm president of the Ontario Hotel and Motel Association. We have over 1,000 members across the province. From the very largest to the very smallest, we represent a broad cross-section.

Let me begin by congratulating the government for its commitment to introduce video lottery terminals in the province and specifically to our industry. It is interesting to note the misinformation being put forth by some to discredit the government on this issue and as a means to promote their own interests.

Ontario's hospitality industry is one of the province's larger and important industries. Unfortunately, the recession has hit it very hard, with sales down 20% with no real turnaround in sight.

Collectively we directly employ 232,000 people with another 85,000 employees indirectly, for a total of 357,000. This represents a decrease of over 90,000 from pre-recession days. Our sales total is about \$10 billion annually, which equates to 3.8% of the province's GDP. We're also an important component of Ontario's tourism sector, which accounts for more than \$3 billion to Ontario annually, and a major purchaser of Ontario agricultural products and a primary source of off-farm income in rural Ontario.

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As I indicated earlier, the recession has hit the industry very hard and shows no signs of easing up. Bankruptcies continue very high, which continue to threaten jobs. Since 1992 there have been more than 1,400. Many businesses continue to struggle to survive, costs continue to escalate, with revenues still in decline. However, on May 8 the government gave them all better hope for days ahead: video lottery terminals.

I'm here today to ask you not only to support the commitment made by the Minister of Finance on May 8, but to ask the government to commence implementation as soon as possible for our industry. I am also here today to put before you some substantiable facts and information on VLTs, not anecdotal misinformation that we have seen and heard recently.

First off, the government is not introducing VLTs to the province; they're already here. According to the Ontario Provincial Police estimates, the numbers range from a low of 15,000 to some 20,000. These illegal grey machines are costing the government approximately \$400 million annually in non-tax revenue. Furthermore, by ignoring their presence some businesses are forced to operate illegally just to try and remain competitive.

VLTs are an accepted form of adult entertainment. They are not an insidious gaming device nor any more addictive than any other gaming available in Ontario, as some would have you believe. Moreover, about two thirds of Ontarians want them in adult licensed bars and restaurants, according to surveys. Interestingly, the poll results showed Liberal and NDP voters slightly more favourable to them than PC supporters.

Studies conducted by Brandon University in Manitoba indicate that video lottery players see video gaming as part of an evening's entertainment. It is planned as part of going out and hence it is part of their budget planning

process. VLT players do so about one or two times per week and spend on average about \$10 per play. Dr Barbara Gfeller from Brandon University conducted a study and found that most people who played VLTs did so to socialize not to gamble, and that it is viewed as a recreational activity. I draw your attention to excerpts from her study, which is attached to this presentation.

We also want to commend the government on its forethought to dedicating funding towards the development of programs for those with gaming problems. There already is in the marketplace today many forms of gaming. VLTs, it should be noted, according to research, are not any more addictive than any other forms available, be they horse racing, bingos, casinos etc.

Data indicates there is a small component of the population susceptible to compulsive gambling. Compulsive gambling, like compulsive drinking, is not a cumulative problem which grows with the introduction of new brands and types. Gamblers transfer their attention from one form of gaming to another. For example, horse racing revenues have declined substantially from the days when they were the only legal game in town.

Tibor Barsony, the executive director of the Canadian Foundation on Compulsive Gambling, has said, "Prohibition is not the answer, education and treatment is." Dr Durand Jacobs, vice-president of the US National Council on Problem Gambling, said when he was here in Canada: "The majority of the population has no problem with gambling. For most folks, gambling is just fun and games, but for the small minority who have a problem, it can be devastating and we have to develop programs to help them."

It is interesting to note that research shows that less than 2% of the population exhibits the potential to become problem compulsive gamblers. This compares to 6% for alcohol, you should note. However, we all recognize that for some, no matter what the product, a problem can develop, and we commend the government in recognizing this fact and moving forward on it.

Despite what you may have heard or been led to believe, the introduction of VLTs in other provinces has proven to be a job-creator and a major stimulator to our industry. Only in Nova Scotia, where originally they were allowed in corner stores, was there a problem. Now that they are in restricted locations, as per Bill 75, we are not aware of any problems, contrary to what some may want you to believe. I should also point out that VLTs and casinos in Nova Scotia are coexisting quite well. A study conducted by Professor Marfels of Dalhousie University has concluded no negative impacts. There are two different audiences: one destination, the other drop in. Based on that experience in those other provinces, VLTs will create thousands of new jobs in Ontario's hospitality industry as well as providing a new source of funds for the industry and government.

In Manitoba, for example, the introduction of VLTs has resulted in the creation of almost one full-time and one part-time job per business location. Overlay those numbers in Ontario and you're looking at well over 10,000 new jobs. These, it should be noted, are direct jobs.

Prior to the introduction of VLTs in Manitoba, the Manitoba Hotel Association reported that its members

were going bankrupt at a rate of about 14 per year. With the introduction of VLTs, that number has dropped to two per year, a drop of over 85%. A recent survey conducted by the association revealed that 65% of its members credited VLTs as playing a crucial role in averting financial disaster.

Another positive spinoff is on the local economy as it relates to the purchase of capital improvements. Construction projects and the purchase of goods and services relative to the operation of VLTs resulted in a boost to the local economy. Each operator spent an average of about \$20,000 to install machines. That figure translates into well over \$100 million in capital expenditures all across this province.

In terms of an implementation schedule, we urge you to recommend the government to move the hospitality industry on line as soon as possible. The minister, in the budget on May 8, said VLTs were being introduced to help stimulate the hospitality industry. This measure is clearly intended to help the industry, but any undue delay could in fact exacerbate the shift in business that will accrue to those who will receive VLTs in the earlier implementation schedule. This will make an already serious economic situation — and I refer to northern Ontario and rural Ontario specifically — even more urgent. It will also delay the fight against the illegal grey machine market, including bringing the \$400 million-plus of new non-tax revenues into the government accounts.

VLTs are important to our industry for a number of reasons. Obviously they provide an important new source of revenue to the business. The proposed 10% commission fee is low in comparison to other jurisdictions — averages between 16% and 30% — but one that we can live with. Because VLTs are viewed by the public as a desirable form of entertainment, they increase the traffic flow, they bring in customers. Customers eat and drink, which creates more economic activity. A byproduct of this new activity is our agricultural sector, as our industry is one of the largest purchasers of Ontario farm products, as well as off-farm employment, as I mentioned earlier.

It is also important to comment on the supposed impact on charitable gaming. Contrary to what you may have been told, VLTs have not had any negative impact on charitable gaming. For example, in Alberta the drop in charitable gaming occurred with the introduction of casinos over one-half year before VLTs were introduced in that province. I should also have indicated earlier that according to our figures charitable gaming in this province is up some 40% over the last three years.

VLTs will help to save our industry. That is the clear and loud voice of all our members all across the province. The facts support that belief. Our members are already licensed, and as such, they are proven responsible professionals, trained and thoroughly familiar with all that results from the operations of activities for adults, including liability. A healthy hospitality sector through VLTs means a healthier local economy. A strong and vibrant business reinvests in its business, hires more people, purchases more goods and services, sponsors local charitable and sporting events and pays taxes.

Before closing, I would also like to comment on a number of other aspects contained in Bill 75. Combining the Liquor Licence Board of Ontario and the Ontario

Gaming Commission into the Alcohol and Gaming Commission of Ontario appears to be a logical move. Combining their operations should not only provide efficiencies, it should also mean less confusion arising over the regulatory enforcement side once the hospitality industry begins to operate VLTs. It should also assist the government in dealing with illegal grey machines.

I would also want to ensure that bad operators are not allowed the privilege of a licence. The provision to revoke a licence to a problem location on the outlined grounds — prostitution, drugs, illegal gaming, physical threats to persons — is well-meaning and good. Before any final action is taken, it should require a public hearing so as to protect the rights of the owner. Interpretation is subjective and we need to ensure that fairness to all parties is maintained.

We commend the government for taking this initiative. It will stimulate our industry without any government funding, it will help eliminate illegal machines and bring untaxed revenues into the mainstream economy and in the process help the government reduce the deficit. Thank you very much.

The Vice-Chair: Thank you, Mr Seiling, for your presentation. We will now move to questions. We're looking at about three minutes per caucus starting with the Liberal caucus.

Mr Crozier: Good afternoon, sir. I tried to deal with this problem that your industry has leading up to this. We know full well how you feel about the introduction of video lottery terminals in licensed establishments in the hotel and motel industry. We're told as well that in Alberta — and you've referred to Alberta — what resulted was less money spent on food and beverage and more money spent on VLTs. Were you aware of that or do you agree with that?

Mr Seiling: I'm aware of what you're speaking of, but I would suggest your information is incorrect. Our information is that the level of purchases on alcohol remain the same; the actual amount spent on food and beverage other than alcohol increased, and I have documentation from an operator to that effect.

Mr Crozier: From an operator?

Mr Seiling: Well, operators.

Mr Crozier: Good. So there's been some research in that area and you feel confident that that's the case.

Mr Seiling: I should point out that it's not just the case in Alberta, it's the case in other provinces as well.

Mr Crozier: In the other provinces, how widespread are VLTs in licensed establishments? In other words, does everybody get a crack at them?

Mr Seiling: The government has a formula for dispersing them and they range from province to province. They're a different formula.

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Mr Crozier: It's my understanding, in the province of Alberta, for example, that they're starting to cut back on the numbers that are in any given establishment.

Mr Seiling: Yes, but you have to understand the reason for that. When Alberta first allowed VLTs in licensed establishments, and they were the first ones to get them, they allowed multiple licences per location. Now they're cutting back to one licence per location for VLTs; it can't have different rooms licensed, so you can't

double and triple up. They're also relocating those excess machines now to other locations that didn't receive them.

Mr Crozier: You're also aware that in Alberta there has been some problem and that there is some concern with how these rooms are observed by the staff, how they're supervised. For example, bartenders are looking after serving people at the bar and these VLTs are in another room. How would you manage that, do you think?

Mr Seiling: Quite frankly, I'm not aware of that, but I don't see the relativity given that, as I understand Bill 75, they're to be in age-restricted locations where the licence is held. I don't foresee that as a problem here in Ontario.

Mr Crozier: You don't see it as a problem because people under age have access to restaurants and you don't think there'll be any problem whatsoever in supervising access to these VLTs.

Mr Seiling: My reading of Bill 75 is "age-restricted," so if you're under 19 you don't get in. Part of your agreement to have VLTs, if you're licensed, is that you are not allowed to have anyone in that room under the age of 19.

Mr Crozier: But it is your understanding that they have to be in a separate room.

Mr Seiling: Your licensed area has to be age-restricted, not a separate room from your licence. My understanding is that the machines are in your licensed area and it's age-restricted.

Mr Crozier: So if I'm a parent and want to go to a restaurant now or a licensed food and beverage area, have dinner, some wine, perhaps a drink before and a drink after dinner, I won't be able to take my children under the age of 19 to dinner with me?

Mr Seiling: That is the case in some establishments today. It's up to individual licensees to decide whether they're going to be age-restricted. That is in effect today and it will be a business decision that each licensee will make as to whether they want to participate in this program.

Mr Crozier: Do you expect that these business decisions, because of the competitive nature of having VLTs in your establishment or not, the revenue possibilities of them, notwithstanding that they're business decisions, might reduce the number of establishments which will be family-oriented?

Mr Seiling: Quite clearly, there are businesses that cater to families that will not want to participate in this program. There are others that cater to an older demographic crowd and will want to. It's worked out that way in other jurisdictions as well and there's not been a problem.

Mr Crozier: Is your experience then that family businesses are not in trouble but other ones are?

Mr Seiling: I didn't say that, sir.

Mr Crozier: I know you didn't say that. That's a point I want to make.

The Chair: Thanks, Mr Crozier. We're going to have to move on to Mr Kormos.

Mr Kormos: Did your association take a position on the last government's casino legislation, the casino location in Windsor?

Mr Seiling: Yes, there was a representation made.

Mr Kormos: What was the position your association made?

Mr Seiling: There was not a major objection, as I recall. I was not with the association at that time.

Mr Kormos: Did the association endorse the casino as it was described: an economic development tool especially for small business in downtown Windsor?

Mr Seiling: As I would recall again, I wasn't part of the association at that time, so I feel it's inappropriate to comment.

Mr Kormos: Are you aware of the Ontario Restaurant Association's report of last year which indicated that the trickle-down that was suggested by advocates of the Windsor casino simply didn't trickle, nor did it go down, that the small businesses in downtown Windsor weren't enjoying economic benefits as a result of the location of the Windsor casino? Are you aware of that?

Mr Seiling: Thank you very much, Mr Kormos. That's exactly the reason why VLTs are so important to the hospitality industry.

Mr Kormos: Exactly. The hospitality industry wants to get into the gaming business.

Mr Seiling: No, we want to get into the entertainment business, sir. If you go back and look at the research, people play VLTs as a form of entertainment. It's not to gamble.

Mr Kormos: In 1995 — you want to talk about Alberta? — a Lac La Biche, Alberta, truck driver killed his wife and himself after an argument over his use of VLTs. A 40-year-old female accounts clerk at an engineering firm enlisted the help of her teenage daughter to steal \$178,500 from her employer to feed her VLT habit. The woman, who had no criminal record before being convicted and sentenced to 30 months in jail, was on the verge of suicide when she sought help. A 47-year-old woman insurance adjuster bilked \$19,117 from her employer to support her VLT habit.

One woman — this was a news report — wagered away her entire divorce settlement. Another one: A man who lost his wife and home because of his VLT habit cashed an entire paycheque into loonies and fed it all into a lottery terminal. One well-heeled Calgary gambler blew a million bucks on VLTs before seeking help.

The experience in Alberta — this is according to therapists who work with Gamblers Anonymous and other treatment organizations — is that the average VLT user will have blown \$30,000, 30 grand, before approaching the abuse commission or Gamblers Anonymous. Is this entertainment? That's entertainment?

Mr Seiling: Mr Kormos, I think the government is to be commended. They are putting money into programs that aren't there today to help those people that no previous government has seen fit to fund.

Mr Kormos: You see, Dr Frisch from the University of Windsor — you might have heard my reference to his study — indicates that among younger people, adolescents, there is already an indication of some 9% who have confirmed gambling problems and another 8% who have a high potential to fall into that category. That's a gross or aggregate number of 17%. This researcher remarks on the fact that this seems to be somewhat unique to a new generation. Aren't you concerned about

the prospect of 17% of adolescents being gambling-addicted?

Mr Seiling: Mr Chairman, can I have —

The Chair: I'm afraid that Mr Kormos in this case, Mr Seiling, will get the last word, because we must move to the next caucus.

Mr Flaherty: I will just take a moment. Thank you for coming, Mr Seiling. I appreciate it.

The point raised by our colleague Mr Crozier about the gaming premises, subsection 8(2) of Bill 75 deals with the issue raised, and just to avoid the ambiguity, the section provides:

"No person in control of premises where there are video lottery terminals, and no person acting on that person's behalf, shall,

"(a) permit a person under 19 years of age to have access to the gaming premises area where video lottery terminals are located."

It's an area within the establishment as defined in the legislation. I bring that up just to clarify some matter that was raised in the other questions, and that is my only contribution, Chair.

Ms Bassett: Mr Seiling, I want to just pursue the job issue. You mentioned that pre-recession you had 90,000 more jobs than you have today — we haven't bounced back in the hospitality industry — and that with the introduction of VLTs Manitoba gained 10,000 jobs or around there.

Mr Seiling: No. If you correlate that, the Manitoba Hotel Association did a survey of pre- and post-VLTs. They found that there were I think 0.9 full-time jobs created per location. If you correlate those to Ontario with the number of machines that are being proposed here, that would work out on the low, conservative side to about 10,000 new full-time jobs.

Ms Bassett: That's what I was getting at. We wanted to find out how many jobs you think the introduction of VLTs would bring to the hospitality industry in Ontario and what kinds of jobs. Just one other part: Would it be in the rural areas as well as in downtown cities?

Mr Seiling: It would be all across the province. The hospitality industry is suffering across the board, but if you want to put it in degrees, it is rural and northern Ontario that are suffering the most, and they are the ones who are struggling the most with the illegal machines.

Ms Bassett: What kinds of jobs would they be? My colleague was talking about low-skilled jobs for people in the horse and harness industry. Would this be the same kind of job, people who wouldn't get jobs somewhere else?

Mr Seiling: We prefer to call them entry jobs. They would be bartenders, bus people, wait staff all across, you name it, within the hospitality establishment.

The Chair: Thank you very much, Mr Seiling, for attending today.

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CANADIAN CASINO NEWS

The Chair: Our next presentation is the Canadian Casino News, Mr Ivan Sack. Good day, Mr Sack. How are you?

Mr Ivan Sack: I'm fine. My name is Ivan Sack. I'm editor of Canadian Casino News. Just to tell you a teeny bit about Canadian Casino News, it's a monthly publication which I own and write. It deals with casino and other gaming across Canada. Right now it has subscribers in seven countries.

Ladies and gentlemen, I want to begin by thanking you for the opportunity to speak this afternoon. My comments will be along the following lines. First I would like to talk about the content of Bill 75, and secondly I would like to talk a bit about the environment in which the Alcohol and Gaming Commission of Ontario, the new agency being created by this bill, will work.

With regard to the content of Bill 75, I support combining the functions of the Liquor Licensing Commission and the Ontario Gaming Control Commission into one body. Alberta, Saskatchewan and Quebec have already done this, and in my conversations with these bodies I've gained the impression that things are not only working well but that significant savings have been achieved by the elimination of two separate sets of inspectors. Hopefully this greater efficiency will be carried through to the bottom line of the Ontario commission and it will reduce the costs associated with obtaining a licence to sell gaming equipment and supplies in Ontario.

The operation of casinos and VLTs and the ability to sell to the Ontario gaming industry are considered a privilege granted by the commission as opposed to a natural right of commerce. The rights of gaming suppliers are therefore at the mercy of the powerful gaming commissions, and to this end I support subsection 11(1) of the act, wherein it gives a supplier the right to appeal a board decision to the Divisional Court, and subsection 11(2) of the act, wherein it limits the right of appeal to questions of process only.

You may not be aware of the fact that by including these provisions within its act the government of Ontario has adopted the model used in Nevada and rejected the approach followed in New Jersey. Unlike Nevada, where the Gaming Control Act provides for judicial review of gaming commission disciplinary decisions and orders but not licensing decisions, the New Jersey Casino Control Act provides for judicial review of all decisions and orders of the Casino Control Commission. I congratulate the government on having selected the Nevada model, as I believe that you defeat the commission when you make its every decision open to judicial review.

I mentioned earlier that I hoped the greater economies achieved by combining the commissions would result in lower licensing fees. Casino gaming suppliers — these are the companies which, for example, sell gaming cards, chips, tables and slot machines and VLT machines — pay an annual \$15,000 licensing fee. The same supplier pays \$5,000 in New Jersey for a four-year licence and \$1,000 a year in Nevada. In all cases, additional fees may be added at the discretion of the commissions in question.

The government places economic development and job creation at the centre of each of its gaming announcements. While I'm not a bleeding heart when it comes to gaming suppliers, I am very concerned that a \$15,000 annual licence fee defeats this objective by making it very difficult, if not impossible, for small and emerging

gaming suppliers to become or remain licensed in Ontario. This leaves the Ontario market open to large, multinational companies with offshore manufacturing and little beyond retail operations in Canada.

In a practical sense we have to ask ourselves why a cabinet-making firm of, let's say, 10 people in Guelph can make pews for a church or synagogue but must pay \$15,000 each year for the right to make gaming tables for a casino. Gaming regulations should be little more than a means to an end. While it must ensure the integrity of those who own or operate or work in a casino, guarantee that casino games are conducted fairly and makes sure that all casino gaming revenues are accounted for, the commission must be careful not to let misconceptions about the gaming industry replace its own common sense.

I know that in a clause-by-clause exercise such as this there is often a tendency to focus on the trees and to forget about the forest, though I would ask that you think about how you position the commission within the broader environment within which it must work. The commission must avoid the temptation to micromanage Ontario's gaming industry.

New Jersey did this by beginning with a very restrictive set of regulations, a set of regulations which, for example, required it to approve promotions and pass judgement upon the colour of the carpet at the entrance to a casino. It did this in part because, as the second North American gaming jurisdiction to approve casino gaming, the state had to pioneer many of its initiatives. They initially did everyone a service by erring on the side of caution. The commission was finally forced to ease its restrictions last year when the relationship between it and the industry it regulated became so confrontational that both its own and the industry's effectiveness became impaired.

While Ontario is in many ways a new gaming jurisdiction, it does not have the same type of learning curve as New Jersey did, as many of Ontario's suppliers are already licensed in several North American gaming jurisdictions. In most cases they have already complied with regulations which are very similar to our own and, to this end, I see Ontario and its commission as having a very unique opportunity to work cooperatively with the gaming industry in a way which jurisdictions such as New Jersey are only now starting to do.

How would I do this? I gave you my thoughts on the need to lower licensing fees as a way to encourage smaller Ontario industries. This having been said, there are several areas where the act should be more specific:

(1) Even though last May's budget talked about the profits from permanent charity casinos and VLTs going to charities, the act does not define what a charity is. I assume the intent is to leave this for the commission to define, though I would caution against this. Commissioners are not gods. I am not going to put any commission on the spot; however, there are well-founded stories of commissions having given casino gaming licences to Little League baseball teams bound for Europe with an equal complement of parent chaperons, and of one NFL team having been given a charity gaming licence to top up its pension plan. As I see it, you have an obligation as you write this legislation to ensure that it is written in a

way which protects legitimate charities from encroachment.

(2) In a commercial casino, everyone who has access to the gaming floor must be licensed, while in provinces where VLTs are located in bars, only the owner-operator of the establishment must be licensed. When it comes to opportunities for abuse, there is little difference between a slot and a VLT given that both must be repaired, both require the handling of cash, and both are open to collusion on the part of dishonest employees. The same ambiguities apply to charity casinos where, while all employees must be licensed by a gaming commission, the volunteers who are responsible for counting the cash at the end of the night's play are not.

(3) I am concerned that clauses 3(4)(a) and (b), which deal with the relationship between the commission and its minister, be strengthened. Clause 3(4)(a) of the act gives the commission the obligation to "inform and advise the minister with respect to matters that are of an urgent, critical or relevant nature." Clause 3(4)(b) gives the commission the obligation to "advise or report to the minister on any matter that the minister may refer" to it.

Clause 3(4)(a) is so broad as to allow an unscrupulous minister and a receptive commission chair to drive a truck through it. Who is to say what type of or how much information is relevant to a particular decision? More to the point, given that the commission is a quasi-judicial panel and must have the independence of a panel of judges, why should a minister, upon request, be briefed on its decisions?

As the present wording of the act risks politicizing the commission, I would recommend that clause 3(4)(a) of the act be struck and that clause 3(4)(b) be amended to require that any communication between the minister and the commission be restricted to written correspondence which must be tabled in the Legislature within 30 days of exchange.

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As I promised in my introduction, I would like to talk a bit now about the environment in which the Alcohol and Gaming Commission of Ontario will work. I have to begin by challenging many of the numbers which I see thrown about in terms of the thousands of new jobs which will be created by placing 20,000 VLTs in Ontario and by the establishment of up to 50 permanent charity casinos. Some of the industry numbers which I see I think are very high, while I think the government's own revenue projections are modestly low.

First, the job projections: Ontario's roving charity casinos last year provided Ontarians with 12,300 days of gaming. If the government increases the number of charity casinos to 50, as it has said it would, this total would go to 15,600 days. This would represent a 30% expansion for the industry and represent approximately 750 new jobs. If, on the other hand, the government only brings in 35 permanent charity casinos, as is presently rumoured, the net job impact would be almost nil, as the industry would simply maintain the jobs which are already in Ontario's charity casino industry. My calculations are based on the expectation that each charity casino will have 100 VLTs and 40 table games.

It is too early to say how many jobs would be created by placing VLTs in bars and at racetracks, as the racing

industry has yet to completely weigh the tradeoffs in the decrease in its handle against its gains from the VLTs. However, given that the racing industry already has cashiers, the job gains here would be limited primarily to service attendants and repair people for the VLTs. The same would also apply to bars, where on the assumption that each licence is restricted to four VLTs, it would mean no additional bar staff, though additional attendants and roving repair people. The management control system would have to be staffed up and, depending upon the configuration used, additional jobs would be created here.

The hospitality industry is better positioned to tell you about its gains, though studies which I have read and conversations which I have had with knowledgeable people within the gaming industry cause me to conclude that VLTs have a small to negligible impact upon tourism. Americans will not fly to Guelph and take a hotel room for two nights in order to play four VLTs in a small bar. VLTs will help to make marginal bars profitable and thereby help maintain jobs. Many bars in Alberta, for example, count on VLTs for up to 50% of their revenue, though these are not new jobs.

When it comes to revenue, the government has estimated that charities will receive \$180 million annually. My own calculations place this at \$222.4 million, based on a total gross for both VLTs and casinos of \$1.67 billion. The government has not made public its estimate of its share of the take, though I place this at \$1.25 billion a year.

The 2% of gross revenue which the government has said it will assign to problem gaming will equal \$33.4 million a year. Given that Ontario now spends \$1 million a year on gaming addiction, this quantum leap in funding would appear to indicate that the government (a) anticipates that its actions will lead to a substantially higher level of gaming addiction, (b) intends to give addiction groups a gigantic windfall, or (c) has not really thought through its program. The choice is yours.

As a final comment, there is concern within the gaming industry that the government lacks a comprehensive gaming strategy and appears to be making major gaming announcements on the fly. Within a period of three years, Ontario will have gone from a market with little beyond lotteries and a small number of roving charity casinos to one of North America's most saturated gaming markets. It's a giant step by any measure and one which, believe it or not, is causing concern within the industry. Yes, gaming manufacturers welcome the new business opportunities which the government's announcements represent, and well they should, though on another level there is a general concern that the government not spoil everything by moving too quickly and provoking a public backlash. Remember, Ontario is to have a referendum on commercial casino gaming in the fall of 1997. The public is bound to view this as a vote on all gaming, and at this point I, for one, would not want to predict the outcome.

The Chair: Thank you, Mr Sack. We only have one minute per caucus. Mr Kormos.

Mr Kormos: Thank you kindly. My calculation was that 20,000 slots in the province of Ontario, population 11 million, is a ratio of one slot for every 550 population.

Mr Sack: Or another one would be two slots for every 1,000 people.

Mr Kormos: Close enough; fair enough. I did that kind of calculation for my own community where I live. I represent the communities of Welland and Thorold, 48,000 people: 87 slots in that community if that ratio were fairly represented. Heck, even at \$1,000 a week in each of those 87 slots, that's \$87,000 a week out of the community of Welland alone. That's a lot of money, isn't it?

Mr Sack: It is, although it goes to the government, a good chunk of it.

Mr Kormos: Quite right.

Mr Sack: In Alberta, for example, the government made an average of about \$61,400 on every slot in the province in 1995 — every VLT in the province, sorry.

Mr Kormos: So in communities that don't have high tourist traffic — and again, tourists come to Welland, but it doesn't have high tourist traffic; it's not Toronto, it's not Niagara Falls — we're talking about a lot of money coming out of the pockets of locals. That's one of the things that concerned me about Windsor as a location, because its catchment area was designed to be a 100-mile radius, which I thought was a little nuts, as compared to, let's say, Niagara Falls.

Mr Sack: Yes, but Windsor brings everyone from Detroit, so —

Mr Kormos: Fresh money. Fair enough. There is some argument there.

What's going to happen when the American side develops similar casinos, especially when they can shoot craps and bettors in Ontario can't because of the Criminal Code? My understanding is that it's some of the big money bettors — not pikers, but big money bettors — who prefer the craps tables. What's going to happen to Windsor and Niagara Falls, Ontario, when New York state and Detroit introduce casinos with crap tables?

Mr Sack: I think first of all Ontario is going to have to eliminate its \$50 valet parking, cut the price of its \$5 hamburgers and perhaps lower table minimums from \$25 down to maybe \$5. That would be a start. Then it will be competitive with casinos in Detroit.

Mr Kormos: What about the dice players?

Mr Sack: I think you're going to have craps in Canada's casinos probably within about a year or two.

Mr Flaherty: Mr Sack, in terms of the context, the reality of gaming today, I gather that even in the casinos, the machine gaming is becoming dominant, as opposed to table gaming.

Mr Sack: Yes. Anywhere from perhaps 63% to 67% of revenue comes from slots, as opposed to table games.

Mr Flaherty: If I recall, that's a reversal of the situation 10 or 20 years ago.

Mr Sack: Oh, yes. What changed it was when they put larger hoppers into slots. That allowed them to up the size of the jackpots, and that attracted a lot more people.

Mr Flaherty: So there's this demand for this sort of machine gaming that includes machines like video lotteries.

In terms of one of your major points, which was, as I understood it, to proceed cautiously, in reviewing the legislation I'm sure you've noticed that we're going to

listen to the experiences of the other eight provinces that have already done this in Canada. But also there's the consultation process, of which this is part, plus the consultation with respect to implementation — because the bill itself does not deal with implementation; it just deals with the framework — and also the five-year review, which is in section 8 of the bill. These are all cautious control steps that I assume you support in terms of moving carefully and in a controlled way along this street.

Mr Sack: Yes, I support moving carefully. The point I'm trying to make is that my concern quite frankly is that the government is not doing this, that the government is moving, in essence, on several streams right now. It's bringing on commercial casinos, most recently Niagara Falls. It's bringing on VLTs, a very large VLT program, bringing on permanent charity casinos, and the gaming commission right now is looking at satellite bingo which will link the province.

Mr Flaherty: You appreciate the lack of control now in the —

The Chair: I'm sorry. Your time is up, Mr Flaherty.

Mr Crozier: Mr Sack, I consider your observations as being at arm's length and that you do have your ear to the ground when it comes to casino gambling. Yesterday I likened this document to being a reckless, fly-by-the-seat-of-your-pants document. Therefore I would agree, in the choice you gave us, that the government has not really thought its program through. We share, and I'd just like you to emphasize it, our concern about the government not planning. Are you aware of any long-term strategic plan that the government has for gaming in Ontario?

Mr Sack: No, I'm not, and this is frankly what causes me some concern and I think causes a lot of people within the industry concern. For example, I asked the Ministry of Finance if they had done a pro forma for the charity casinos because a lot of my subscribers, the charity casino operators from across the country, are coming to me and asking me what I think etc, and they're trying to weigh whether 10% of gross will cover their cost.

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The problem, as I've come to see it, is that normally you would do a model business case and you would say that based on this, the following split will be sufficient. The charity casino operators, for example, will tell you they can't operate a casino on 10% of gross. Part of my concern is that I would like to see more study. A decision to put VLTs at Windsor Raceway: What impact does this have on the Windsor casino? Or a decision to put VLTs at Fort Erie Race Track: What impact does that have on the revenue the government itself expects to get from the Niagara Falls casino? Is the government sort of trying to take it with both hands, but frankly by taking it with one hand, will take it out of the other hand, if I explain myself?

Then also, a really big concern I have is that I support gaming and I think it's a very legitimate form of entertainment for people; on the other hand, as I mentioned, I am concerned that the referendum that is coming along, for a lot of people, particularly if the VLTs are starting

to be introduced into restaurants — I think in a lot of cases your constituency office telephones are going to light up, because I have talked to members of the Legislature in other provinces — in fact, some of them are my subscribers — and they tell me that they have no end of headaches with VLTs. As a result, the Gordon committee in Alberta recommended that the number of VLTs be reduced, not only that the number of licences in each establishment be reduced to one, but that the number of VLTs permitted per licence be reduced from seven to four, and that was from the Klein government. The committee which reported in February in Manitoba —

The Chair: I'm sorry, I'm going to have to interrupt you because we have run way over. Mr Sack, thank you for your presentation.

STANDARD BRED HORSEMAN'S ASSOCIATION

The Chair: We proceed to the Standardbred Horseman's Association. Good afternoon.

Mr Lou Liebenau: Good afternoon. My name is Lou Liebenau. I'm a director of district 6 of the Ontario Harness Horse Association. The two racetracks in my district are Mohawk Raceway in Campbellville and Woodbine in Rexdale. I am also the Ontario Harness Horse Association representative on the OHRIA VL committee.

I would like to thank the committee for the opportunity to make my presentation, which will be fairly brief. The Ontario Harness Horse Association strongly supports the implementation of VLTs at racetracks. We want to work with the government to maximize revenues for the benefit of government and our industry.

Racetracks are the logical choice for the implementation of VLTs. We have the facilities, we have parking, we have customer amenities, we have secure environment for customers. Several hundreds of new jobs will be created by this implementation.

It is vital for our industry to be able to compete for the gaming dollar with two new casinos opening within a one-hour drive of Woodbine and Mohawk raceways. Harness racing in district 6 is world-class. We compete as Ontarians successfully in Scandinavia, Europe and North America.

Our thousands of members have invested several hundreds of millions of dollars in breeding and racing stock. We buy farms, thousands of trailers and trucks. There are well over 10,000 people employed in Ontario as a result of racing in district 6. We represent province-wide some \$3 billion into the Ontario economy. The money we earn stays in Ontario. In effect, we are you, we are your fellow citizens. With your anticipated constructive assistance, we can be a strong and vibrant industry.

Mr Flaherty: Thank you for being here this afternoon, sir. I appreciate it, especially on behalf of such a large industry in Ontario. Earlier this afternoon we heard from Mr Lennox of the OHHA, who gave an example which I hadn't heard before from Dover Downs in Maryland of purses a year ago of about \$11,000 and now at about \$75,000.

Mr Liebenau: Actually, on the purse structure at Dover Downs, I was there in the spring and I believe

January 1 the total purses were \$9,000 for the day, and when I was there on April 30 the total purses for that day, with no stakes races included, which would increase it, but no stakes races included, was \$75,000 for that day.

Mr Flaherty: That goes along with the introduction of the VLTs at that location.

Mr Liebenau: Yes, that's the result of that exercise.

Mr Flaherty: I take it it goes without saying that higher purses are desirable for your industry.

Mr Liebenau: The higher purses definitely allow the members of the industry to buy new equipment, trucks, trailers, better livestock to improve the breed etc. It just rolls over into the economy and helps the economy thrive.

Mr Flaherty: Do you have any idea how many people work in district 6 in your industry?

Mr Liebenau: Any statistics that I've seen, it's well in excess of 10,000. District 6 is basically, if you will, the marquee district of Ontario for harness racing.

Mr Guzzo: Easy now, easy.

Mr Liebenau: It's a very high concentration. Between Mohawk and Woodbine, we race 265 cards a year, which is the largest of any jurisdiction in North America. Getting back to the employment, we supply year-round employment to many thousands of people doing that.

Mr Guzzo: The title is the Standardbred Horseman's Association. This is really the Ontario Harness Horse Association.

Mr Liebenau: I am a district 6 member of that association, yes. The high concentration of our sport in Ontario — I'll be careful this time, but it's concentrated in district 6 and that's my focus.

Mr Guzzo: You're elected every two or three years.

Mr Liebenau: Every two or three years, yes.

Mr Guzzo: The people who elect you and the people you represent are owners, drivers, trainers, grooms, caretakers; correct?

Mr Liebenau: Correct.

Mr Guzzo: Many of them work in the farming communities and live in the farming communities and the small towns in district 6; some of them live at the racetracks.

Mr Liebenau: Definitely, yes.

Mr Guzzo: It's these people you're speaking for when you come here today.

Mr Liebenau: Absolutely. We're representing — it's actually taking place right now. Our association on a provincial level is greatly concerned for the average person in the industry, the full-time employee, the groom. As a matter of fact, we've just recently been able to introduce a pension program for them. So we're very much interested in the betterment of the average person working full-time in the industry.

Mr Guzzo: It's your organization that negotiates with the tracks a percentage of the purse money, the betting dollar, to be returned through the purse pool.

Mr Liebenau: Yes, correct.

Mr Ramsay: Thank you, Mr Liebenau, for your presentation today. Has your association done an impact study as to the benefits of the introduction of VLTs to the racetracks?

Mr Liebenau: The intended benefit of the VLTs is to allow us to compete on an even level with the several other gaming venues that have been introduced in Ontario. The ones of the highest impact — the Windsor Casino, the Orillia casino that just opened, and the one that will be of the highest impact of my district 6 would be the one in Niagara Falls. Basically, the racetrack of today has to be an entertainment centre. We have to have the food, the entertainment via the live racing, which is primarily our number one objective, and basically offer something for everyone and make it fun for them to come to the racetrack. The good old days of the races and then you go home is sort of gone. You have to compete in a very highly competitive entertainment market.

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Mr Ramsay: So the introduction of VLTs, I guess then, obviously will make you more competitive against the other venues.

Mr Liebenau: Yes, definitely.

Mr Ramsay: Have you done any impact studies as to the further introduction, as this government is planning, of the VLTs into the charity casinos that a lot of communities are going to have, and then phase 3, when licensed establishments all over Ontario will have them?

Mr Liebenau: One point I'd like to make, and I will answer your question, is that the jurisdiction, being Ontario, is the largest jurisdiction where this type of venture has taken place. We have well over \$1 billion in betting. The larger the betting in the jurisdiction, the larger the likelihood of cannibalization. If you have a larger bet, you have more to lose, and that's basically where we're at.

We think that, as my presentation very briefly quoted, we're a natural for these machines in all the things we offer: the secure environment, the parking. When you put 400 or 500 machines in one locale, you're definitely going to create additional employment. They have to be managed, repaired, supervised etc; more people coming to the facility; parking lot attendants, more restaurant workers etc, the offshoot. The less concentrated the equipment is — I think it was stated before that some restaurants in Alberta have four or five machines — there's no additional employment created. We hope to get the opportunity to work closely with the government, review the implementation after a reasonable length of time and possibly increase our participation.

Mr Ramsay: So you're not concerned with phase 2 and phase 3, with the further implementation?

Mr Liebenau: We're not concerned in the effect that we just want the opportunity to put our best foot forward and be able to compete on an even level. If the government decides that if in fact earnings through the race-tracks maximized do not fulfil its requirements, then it's up to the government if they want to further the expansion.

Mr Kormos: When you read Scarne, you're told that horse racing is just about the best bet in town, is the best rate of return on your bet, at the horse track, as compared to almost every other form of gambling, right?

Mr Liebenau: Basically, yes, that's true.

Mr Kormos: Notwithstanding that, Garry Smith from the University of Alberta in his research tells us that the

gambling industry most impacted by the slots out in Alberta is horse racing. Are you aware of that observation by Garry Smith from the University of Alberta?

Mr Liebenau: Yes, I've heard of it. I think that — if I may give you my reason for it?

Mr Kormos: Sure.

Mr Liebenau: I think the reason for it, obviously, is that there are 20 minutes to half an hour between horse races and the number of bets available with this equipment is much more frequent. That's basically the reason for it.

Mr Kormos: That's right. You got it. But here you are — and you know the hotel-motel association was here as well. They want a piece of the action too, right? You know that.

Mr Liebenau: Yes.

Mr Kormos: Yes, there you go. I read a little bit of body language there. The horse race industry wants a piece of the action, right?

Mr Liebenau: Definitely.

Mr Kormos: Fair enough. You don't want the casinos to have it all to themselves. Down in Vegas, 7 Eleven stores — that's why they're called 7 Eleven, because the name evolved out of Las Vegas; it has nothing to do with their store opening hours, because they were always 24-hour-a-day operations. They've got slots in the 7 Eleven stores. Should the 7 Eleven stores in my community, if this is what's going to help them make it through tough times —

Mr Liebenau: That would be very regrettable, I think.

Mr Kormos: Why?

Mr Liebenau: You don't have any control. You've taken it to a level where you're putting it beside bubble gum. I think that's completely wrong and you will definitely have minors playing the equipment. That's totally wrong.

Mr Kormos: But you see, 7 Eleven and other variety stores are lobbying this government now for the right to sell beer and wine in their corner stores.

Mr Liebenau: That'll be the government's decision.

Mr Kormos: Right. They say that if they're allowed to sell beer and wine, they know they're going to have to provide adults or persons over the age of 19 to sell and dispense the beer and wine. They know they're going to have to card people just like they explained they card them now for cigarettes. Heck, as I say, in Las Vegas, 7 Elevens have slots.

Mr Liebenau: I don't believe Ontario should be Las Vegas. We should have more of a family-minded initiative in these matters.

Mr Kormos: Are you concerned? Because you tell me you'd rather not see slots in a 7 Eleven store or a Becker's or whatever the case might be.

Mr Liebenau: That's my opinion as an individual.

Mr Kormos: Fair enough, as a family person, as a member of the community.

Mr Liebenau: Yes.

Mr Kormos: You don't want them by the bubble gum. Why not? You don't want to see kids playing them?

Mr Liebenau: Definitely not.

Mr Kormos: You don't want to see kids seeing adults play them?

Mr Liebenau: That I think is up to their parents and up to the legal implications of the facilities where these machines are and whether they're allowed in or not. I can't comment on that. I wouldn't want my child to be in that environment.

Mr Kormos: Because it indoctrinates, it legitimizes gambling for a child, doesn't it?

Mr Liebenau: It makes it easy, yes.

Mr Kormos: It leads, in your view as an adult, to behaviour on the part of the child that could well lead to gambling later in life, inappropriate gambling?

Mr Liebenau: You make different decisions about your life at certain junctures. I think to have a child make that decision at that age is premature.

Mr Kormos: You want to protect children from exposure to that?

Mr Liebenau: I think that would be advisable, yes.

Mr Kormos: Because you, as a mature person, perceive the potential for a child being impacted or affected by virtue of that?

Mr Liebenau: Well, adults are influenced by things that they are told are good for them, or whatever.

Mr Kormos: Frisch's study at the University of Windsor shows an alarming 17% of adolescents either with proven gambling problems or high risk for gambling problems — unprecedented, the first generation we've ever seen that. Scare the heck out of you?

Mr Liebenau: I can't comment on that; I'm not aware of it.

The Chair: Thank you, sir, for your attendance here today.

BIG SISTERS OF PEEL

The Chair: Our next presenter is Big Sisters of Peel.

Ms Eileen Moore: Good afternoon. My name is Eileen Moore and I'm the director of development for Big Sisters of Peel. I'd like to thank you for the opportunity to present to the committee our agency's thoughts and concerns regarding Bill 75 and the introduction of video lottery terminals.

I would like to tell you first a bit about our agency, who we are and what we do, tell you the numbers and then finally comment on some concerns we have regarding video lottery terminals and how they will be introduced.

Big Sisters of Peel is a young agency, although this is belied by our current status. It was incorporated in 1982 and in its first year provided service to 16 children through the one-to-one match with a big sister. Growth was steady and manageable over the next 11 years, but over the past three years the increase in the need for service has been explosive. In early 1993 the agency was providing service to 190 children through the matching program and another 74 children were on the waiting list. Now in 1996 there are 330 matched little sisters and 110 children waiting. We have become the largest Big Sisters agency in Canada and we anticipate that at current levels of growth we will be the largest Big Sisters, Big Brothers or amalgamated agency in Canada within a year. Combine this with the fact that our agency continues to raise approximately 75% of our budget through our own

efforts, and is not funded by any level of government, and I think the agency is a fine example of grass-roots community service.

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I'm often most proud of the agency's preventive focus. Our goal is to help prevent further difficulties in a child's life, to help them make better choices. We have learned not only through anecdotal evidence but also through empirical studies that role-modelling agencies like Big Sisters and Big Brothers do make a significant difference. A recent study showed that children who had benefited from the guidance and support of a positive adult role model went further in school, obtained better jobs and were more likely to break the welfare cycle. Not only do these agencies provide a cost-effective service now, but the difference lasts a lifetime.

As I mentioned earlier, our agency is responsible for raising 75% of our budget through our own efforts. The other 25% comes from the United Way of Peel. The fact that our agency has been able to serve an increasing number of children is only because of the revenues we have generated through charitable gaming activities. We will run 47 bingo sessions this year, manage three break-open ticket locations ourselves without the use and payment of a gaming assistant company, run 24 Monte Carlo events and have just completed our two yearly raffles. We will manage all of these events on our own and will coordinate the incredible number of volunteers needed for these events. It's hard work, but we believe in the merit of that and have the wonderful support of our volunteers.

But in these difficult economic times, when corporate and private donations are strained, it has been the revenues generated through charitable gaming which have ensured our service provision. Charitable gaming will account for 50% of our budget in 1996. Perhaps it will not always be so and we may once again see fund-raising opportunities in other areas, but right now these revenues are crucial to the financial health of our agency and, frankly, many other community-based organizations.

It's safe to say that in the region of Peel charitable gaming raises as much, if not more, moneys for services than does the United Way. I wonder how other communities fare. It's an understatement on a grand scale to say that these funds are important to our communities, and yet I can't help but note that it seems that, as charitable organizations, our revenues from this source are increasingly threatened. I remember a paper which came out several years ago called Charitable Gaming — Putting Charities Back in the Driver's Seat. I must say, these days it doesn't even seem that charities get to ride in the car.

As we see it, the gaming industry is in a state of upheaval: new games, new stakeholders and a playing field which is not level. More than anything else at this point, what we need now is to stop and develop a provincial strategy, much the same as British Columbia did, before we proceed with any other initiatives. Failing that, how does our agency perceive we will be impacted by this issue, Bill 75? In a nutshell, we're worried.

Our concern is not with the introduction of these machines into racetracks; it is primarily with the potential

introduction into licensed establishments. For example, there's a licensed restaurant just a few doors down in the mall where our break-open ticket vendor is located. This vendor has been selling tickets for our agency for five years now, and they raise approximately \$100,000 net for our agency per year. About one sixth of our agency's services and staff are dependent on these revenues. If a restaurant were to put in VLTs, we know that our break-open ticket revenue would drop drastically. The argument could then be made that our agency might have access to VLT revenues from casino events or a share from other locations, but how much, and is it sure to offset the loss in revenues we will surely face?

The second challenge is the distribution of funds which will be provided to the charitable sector. Will it be centrally pooled and organizations will make application; another Trillium Foundation perhaps? Is it possible that the ability to secure funds from this source will have little to do with the organization's commitment and ability to work for these revenues and more for its ability to put together nice proposals? In the case of our organization, we have always put forth the effort, volunteer support and time into educating ourselves so that we could secure the best possible gaming activities or locations.

Finally, we are concerned with the percentage of revenues from VLTs currently designated to the charitable sector. As we understand it, the Minister of Finance has said that 10% of total revenues from VLTs will be provided to the charitable sector. This province used to have a tradition that all gaming activities, limited though they were then, were charitable in nature, but as we all know, that has changed.

A growing public acceptance of gaming as a form of entertainment has led to many stakeholders in the industry and a mushrooming of the kinds of gaming available. The last five years have truly been of concern to the charitable sector. We find ourselves strictly regulated, limited in the kinds of games we can provide, unable to change those that we can offer and unable to effectively advertise our events. We can't compete. These days I wonder if we will even be able to maintain our place in this industry over the next two years. Under these circumstances, I find 10% of VLT revenues to be nominal and gratuitous.

We suggest the following:

Do not proceed further until a provincial strategy on gaming has been developed with the full consultation of the charitable sector.

Ensure that any further expansion of gaming activities in this province, including VLTs, returns to the tradition of being charitable in nature.

Failing that, do not introduce VLTs into licensed establishments until we have a better understanding of the financial impact on the charitable sector.

Allow the charitable sector to compete on a level playing field, with an expansion of products and advertising.

Quite a wish list, isn't it? At Big Sisters of Peel we know the value of the work we do. We believe in the hard work to ensure our financial health and we'd ask you to consider our request. Thank you.

Mr Ramsay: Eileen, thank you very much for your presentation. You bring up now from a non-profit organi-

zation a concern that I certainly share and that was brought up by some of the people who manufacture Nevada tickets and that sort of thing. It really strikes home. The government members should really listen to this presentation, because I think what many are asking for is the government maybe just to slow down a little bit. You've even said you don't mind the first phase, going into racetracks, but as to the further extension of these machines; I think you're right: The government should halt that until it does a total impact study on not only the economy but organizations such as yours.

I think the point you're making — I was very impressed by the list of 47 bingos you run every year, the Nevadas you run, the Monte Carlo nights you run. You're running them and managing them, so you're maximizing the profits there. What the government's doing with this is going to destroy the tools that previous governments — all governments — have given you over the past, which you're using effectively, with this introduction of VLTs all over the place. Now you're going to have to come begging back to the government — like you say, what kind of application it's going to be — for a handout, where the way we used to do it, and still do it today, is you have the tools, so however hard you work in your organization, your volunteers, you can benefit your clients, in this case girls who need that adult supervision and help.

It's devastating. I'd like to ask if the government has a study on what it's going to do and making you into an application-writing sort of organization rather than a community group that puts its hands together and creates opportunities for people to give money. It's terrible. You've said it there. Is there anything else you'd want to say about this? Do you see yourself now as just basically sending applications to the government? I guess that's what you'll be left to do.

Ms Moore: There are two points to be made here. Truly, we believe in an overall gaming strategy now for the province. There are so many stakeholders, and all of us — I'm sure you've heard "level playing field" if not once, a zillion times, and will continue to hear "level playing field." There are a lot of us out there now juggling for our place in this industry. We need to stop until we identify where each stakeholder stands now and will stand for the future. Right now we're scared. We're worried because we don't know what will happen to us. That's really crucial at this point for us.

Our preference, and the point is well made, is to work for our revenues. We believe in that. We think it makes us more energetic, more viable as a charitable organization. We don't think the granting system, just doling money out based on nice proposals, is necessarily always healthy, so we would prefer to have the tools to work for our revenues — truly.

Mr Ramsay: It is ironic, Eileen and members of the committee, that a government that I thought really believed in self-sufficiency and self-reliance, as I think a lot of people in Ontario do today, that we all have to sort of pull up our socks and contribute to what we want to do, has the very opposite sort of message. Non-profit groups and charities are getting from this government a message saying, "We're going to go back to the good old

days where you just apply for a government handout and we'll dole out the money." It's wrong. I thank you for your presentation.

1550

Mr Kormos: Your concern was expressed by some already during the course of these hearings and indeed reared its head during the introduction of casino gambling in general back three years ago. I appreciate the concern you have, but I also appreciate that you're here with a Big Sisters organization. I was, some 15 years ago now, for several years on the board of directors of Big Brothers down in Welland, where I'm from, where I live. That, along with the work I did at the time, caused me to become pretty familiar with the kinds — and again, they're not all the same, you know that; every family is different — of families that, sadly, too many of these kids came from, which is why Big Brothers and Big Sisters is such an important resource. As you talk about waiting lists, that was one of the profound problems, and still is. For lack of volunteers — yes, times have changed. You know some of the problems. Especially volunteering for that kind of work, there is simply some hesitancy that wasn't there two decades ago.

As I say, I'm also familiar, not only because of my role on the board but because of my involvement in the community and the job I did at the time and the work I did, with, sadly, too many of the families that had single-parent children, children of alcohol abusers, children of drug abusers, children of gambling addicts.

You know that one of the things we've been talking about in this discussion of slots has been our fear. Some of us have a profound fear, based on work that's been done, based on observations, anecdotal, and research that's been done in Great Britain, among other places, a whole lot of it in Great Britain, on the highly addictive nature of slots. I agree that studies from different places produce different results, but one observation by persons doing studies showed that VLT users are generally people who can ill afford to use their money on VLTs. Most often they are less educated than the general public, suffer from low self-esteem and are employed at lower-paying jobs.

Part of that connects with me. These are people who want to grab the brass ring. Why not? There's the prospect of a payoff. Casino Rama up in Orillia: By God, we read about all the winners. Did you see that in the paper a few days ago? It was \$15,000 — I can't remember the number. We didn't read about the losers.

One of my concerns, and I think a whole lot of folks' — and I appreciate what you're saying. At the end of the day I'm concerned but confident that this government is going to put slots, 20,000 of them, across this province. That having been done, obviously our struggle is going to have to be to make sure that at least charities, which have been screwed out of their piece of charitable gaming, get a piece of it.

But I'm also concerned about the fact that these slots — I'm convinced, I really am, and I'd like to be able to come back in 10 years' time and say I was wrong — are going to create the very sort of family and individual problems that bring mothers, yes, and fathers, to your office signing up for Big Sisters for their daughters

or to the neighbouring Big Brothers office signing up for Big Brothers for their young sons.

We read Frisch's study from the University of Windsor, that an aggregate of 17% of the almost 1,000 adolescents he studied — approximately half of them already had confirmed gambling problems and the other half showed a strong predilection. He observes that this is totally novel; this is a generational phenomenon. It doesn't coincide with the rate of gambling addiction among the adult population currently. He is concerned and speculates that this could well be a new generation with a phenomenal percentage of addictive gambling.

The potential of these slots, the crack cocaine of gambling, to destroy families — and I know for a fact that when I was with the organization some of the kids we dealt with were the children of gambling addicts. Not slots at the time; it was far less pervasive forms of gambling. I simply raise that. I feel concerned because you're, I suspect — and maybe you're not, maybe you feel okay with slots, but maybe you're in a little bit of a catch-22.

Ms Moore: I have a lot of thoughts, and people do regularly question me, as to, "How do you make peace with gaming as a form of fund-raising?" My understanding is that a recent Canadian study shows that 5% of the population has problems with gambling; 1% to 2% are pathological gamblers. I think there a lot of behaviours we engage in as adults where a certain amount of the population will have problems with an activity that the vast majority of us don't. Does that mean we can take away something that's reasonable from the majority of people who don't have a problem with it? Yes, I do think about it, I do concern myself with it, but I have made peace with it, largely.

Mr Guzzo: Thank you very much for your presentation. Not unlike my friend Mr Kormos, I too have had some experience over a period of 11 years in dealing with the families he so capably describes. I have some concern with your concern, because when I hear the type of person who would go out and spend money playing video lottery, if you're correct and it's going to hurt you, I have to assume that the person Mr Kormos described is the same person who's buying those pop-open tickets in that shopping centre. You're afraid they'll turn to the video lottery machine if it goes into the bar or restaurant, which in all likelihood it would not. In other words, if you accept what Mr Kormos suggests, you have to be concerned that you're taking money from that same type of person today, that the person who's buying your ticket or going to your bingo is the same person with the low intellect who can't really afford it, using that money, taking the clothes off the backs of their children. Otherwise, if it's not, you won't be hurt by these. Correct?

Ms Moore: I'm sorry, are you identifying a particular segment of the population, or are we looking at the demographics of gamblers as a whole?

Mr Guzzo: I'm doing exactly what Mr Kormos did.

Ms Moore: I know, and I'm kind of confused by the whole thing.

Mr Guzzo: Oh, you're confused by Mr Kormos? I'm sorry, because I thought you were drinking it in. I was afraid you were swallowing it. Well, if you're not buying it —

Ms Moore: No, I have my own position on gaming.

Mr Ramsay: We're confused too, so don't worry about it.

Ms Moore: No, I've made peace with how I feel about it.

Mr Guzzo: Let me ask you this: With regard to your bingos, do you have your own hall or do you use a commercial hall?

Ms Moore: No, our hall actually is one of — I believe there are only two or three in Ontario which are completely not-for-profit. We operate out of Rutherford Bingo, which is owned by the Rotary Club, so every single cent, whether it's raised by us or raised by Rotary, ends up back in the hands of the community. It's completely not-for-profit. Do I believe they should all be like that? Absolutely.

Mr Guzzo: Maybe that's where we're going with this bill.

Ms Moore: Now, there's a stretch.

Mr Guzzo: Certainly one of the motivating factors that's causing the government to act is the fact that in some areas — in my own area, the member for Ottawa West, my former law partner Mr Chiarelli, has been one of the most vocal people with regard to the bingo halls and to the Monte Carlos not returning a fair return to the charities. That's the Liberal member for Ottawa West. He's not here today, so you get a different story from up north or from down around Windsor, but I'll tell you, when you get in the Legislature —

Mr Crozier: I will defend him, because he wants them non-profit just like she does. Don't pick on somebody who isn't here.

Mr Guzzo: How many bingo halls did you refer to in your area that operate that way?

Ms Moore: There are only, I believe, two or three in Ontario that are completely not-for-profit. There is only one in the region of Peel, and that's the one we operate out of.

Mr Guzzo: I see. With regard to the Monte Carlo night, who runs those for you?

Ms Moore: A management company.

Mr Guzzo: How long have you been doing that? How many years?

Ms Moore: One and a half.

Mr Guzzo: I see. So the return to the charity, your organization, has been consistent over that period of one and a half years?

Ms Moore: No. Monte Carlos fluctuate drastically, because we're gypsies. We are only allowed three-day events in and out of various venues. It's very difficult to gauge how things are going to be from one month to the next. We can't advertise effectively. Our players don't know where we're going to be next. No, we have no control over that.

Mr Guzzo: So that's what the permanent hall that this bill provides for is going to correct. Your concern is that you won't get the choice days or you won't get as many days?

Ms Moore: No, I'm not identifying any issues around the permanency of charitable casinos. Our concern at this point is strictly with the introduction and implementation of VLTs. Mind you, given that, I still do believe that a

provincial strategy needs to be developed that will include the permanency of charitable casinos.

The Chair: Thank you, Mr Guzzo, and thank you, Ms Moore, for your presentation. It's much appreciated.

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ONTARIO JOCKEY CLUB

The Chair: Our next presenter is the Ontario Jockey Club. Welcome, Mr Biemann. Would you proceed, please.

Mr Helmut Biemann: Thank you. The Ontario Jockey Club appreciates this opportunity to present to you its views on the introduction of video lotteries at its three racetracks in Ontario.

The OJC was originally established in 1881 to conduct horse racing in the province of Ontario. Since the early 1920s the OJC has conducted parimutuel wagering under powers provided to it by section 204 of the Criminal Code.

Today, the OJC is a non-profit organization with a clearly defined objective to provide at its racetracks the highest quality of horse racing and the best possible facilities for the public and all those engaged in the industry.

The OJC is the largest horse racing organization in Canada and one of the largest in North America. Wagering conducted at OJC racetracks is in excess of 70% of the parimutuel wagering conducted in Ontario and 50% of the Canadian industry. Racing is conducted year-round at the OJC racetracks over 550 race days each year.

The government's decision to introduce video lotteries initially at racetracks fits in with the OJC strategy of developing each OJC racetrack as a sports, gaming and entertainment location. The OJC supports the introduction and is looking forward to developing business plans with the provincial government which are mutually beneficial.

The OJC believes that in today's world gaming has been accepted by the general public as an acceptable form of entertainment. The introduction of video lotteries will provide a competitive gaming alternative to the present underground gaming economy, which continues to grow with advances in technology, particularly at offshore locations and via the Internet.

The OJC believes that it is socially responsible on the part of the government to introduce video lotteries initially in a controlled gaming environment such as is provided by the OJC's racetracks. Racetracks are, contrary to some beliefs, heavily regulated and controlled by the federal and provincial governments through their agencies: the Canadian Parimutuel Agency and the Ontario Racing Commission.

The OJC believes that the government should conduct studies six months after the introduction of video lotteries at racetracks to assess the social and economic impact of their introduction, particularly on the present participants in the Ontario gaming industry.

The OJC further believes that video lotteries will integrate well with its present parimutuel operations because of the many synergies, which principally are the integrity of its operations, security, surveillance, money-handling procedures, experience with electronic gaming,

and a pool of licensed employees with extensive knowledge in gaming. The OJC considers that in locating video lotteries initially at racetracks customers will have to make a conscious decision to travel to a racetrack, thereby reducing impulsive gambling.

The OJC does have some concerns, however, as mentioned yesterday by Minister Sterling. Parimutuel wagering at racetracks will be impacted to some degree by the introduction of video lotteries. The OJC believes that by working in a cooperative partnership with the government of Ontario a video lottery business plan can be developed which will meet the concerns of the general public while being beneficial to the provincial government, the local municipalities in which the OJC operates, provincial charities and the racing industry, which currently employs an estimated 40,000 direct and indirect, full- and part-time jobs in Ontario and is the third-largest component of the agricultural economy. In fact, the OJC is within the top 30 employers in Toronto.

The OJC is committed to changing with an evolving North American gaming marketplace, particularly in the face of increasing competition, to become a first-class operator of sports, gaming and entertainment complexes in Ontario designed to meet the demands of today's entertainment consumer.

Mr Flaherty: We had some comment this afternoon from one of the presenters about the future of racetracks as entertainment centres. Can you comment on that?

Mr Biemann: I believe that to compete we are going to have to become multi-activity destinations. Currently, most racetracks are pretty much focused on horse racing. To compete, we're going to have to appeal to the increasing selectivity of modern consumers.

Mr Flaherty: There has also been some concern expressed here so far about ensuring that minors not have access to video lotteries, and of course the legislation has certain provisions in that regard. In terms of the Ontario Jockey Club tracks, what would you envision being arranged to ensure that minors cannot access the machines?

Mr Biemann: Our facilities are very much controlled environments. We would anticipate that the actual gaming areas for VLs would be completely segregated. We would have security guards at the entrances in any event, given the flow of money. That system would allow us to ensure that no minors would even be allowed on the gaming floors.

Mr Hudak: Thank you, Mr Biemann, for your presentation. It's my understanding from your presentation that there are 40,000 people employed directly or indirectly in racing.

Mr Biemann: Full- and part-time. A study done out of McMaster University by the industry association equated it to 27,000 full-time equivalent jobs.

Mr Hudak: You're probably aware that I come from Niagara South, which includes the Fort Erie Racetrack, so I have some experience in these matters.

In the current situation, the status quo, VLTs were not introduced at racetracks. You were competing against casinos. You were competing against all kinds of other gaming legalized by the previous government. New York state is heading towards gaming in a big way; Michigan

as well. What would be the state of these 40,000 jobs if video lotteries were not implemented at racetracks?

Mr Biemann: They would be in jeopardy in the immediate term.

Mr Hudak: And this isn't just the OJC; this is not a small group of people. These are hardworking people. They don't get a tremendous amount of money from the work, although they work very hard, very labour-oriented.

Mr Biemann: That's correct. For most people on the horse side of the business, it's a labour of love.

Mr Hudak: You mentioned a multi-activity package. Are there other jurisdictions that have tried putting video lotteries at tracks, and what's been the experience? Has it been a successful package?

Mr Biemann: Yes. There have been successes and there have been failures. The best example we found was in Prairie Meadows in Des Moines, Iowa. They successfully integrated it in every sense, operationally, marketing-wise. The racing integrated with the VLs.

A place where it didn't work out very well was Louisiana Downs. This is in Shreveport, Louisiana. They put 500 video lottery terminals in the plant, and initially the track purses increased and the track started to show a small profit. Once the three riverboats opened, with full-blown slot machines and craps tables and everything, they couldn't even get people to their VLs. They're down to 90 now and they're suffering, and they're wondering what their future is going to be.

Mr Hudak: Let me ask you something just from my own backyard, the Fort Erie track, on the border right next to Buffalo, New York. For a million people, that's within a few hours' drive. If the government implements this sensibly, into the racetracks first, and then, as you said, evaluates how it's gone, what do you think that means for the people from Fort Erie, Port Colborne, Welland, Wainfleet, from my part of the province?

Mr Biemann: Fort Erie is right on the gateway to Buffalo. It represents a tremendous opportunity to exploit a market south of the border, and if we can implement it properly — as I mentioned before, Prairie Meadows has done an excellent implementation. They were allowed some funds to renovate their property so that it was a pleasant place to come. Louisiana Downs didn't even do a paint job. They just bolted them to the floor in a dated grandstand. If it's done cooperatively and if it's done with a mind to being a first-class installation, we will draw thousands of people daily from south of the border, which will provide a large number of huge economic benefits.

Mr Ramsay: Thank you, Mr Biemann, for your presentation. Has the jockey club done impact studies on the benefits of VLTs to racetrack attendance and betting and what maybe some of the downsides are? Are there reduced revenues to betting when you've got the VLTs present? That's especially at your class 1 tracks where you're going to have 500 of them.

Mr Biemann: VLTs have never been introduced to a jurisdiction that has the volume of betting that especially the Toronto market has. The studies I've seen go as high as a 40% cannibalization rate. Definitely there will be some, but it's anybody's guess. The cannibalization will be somewhere between zero and 40%, the loss of parimutuel wagering over to VLT wagering.

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Mr Ramsay: Will this still go towards the horse racing, though, that you would derive some revenue from this to help with the purses, or are purses going to suffer since the betting is down?

Mr Biemann: Our hope would be that some of that cannibalization, or all of it hopefully, would be offset by revenues from the VLTs.

Mr Ramsay: Have you looked further afield to the phase 2 implementation that the government has planned, with the extension of the VLTs to the charitable casinos that will be in many localities across the province, and then of course phase 3 when the plan is to extend VLTs to licensed establishments? Do you have a sense of what the impact might be, once you've got people on to the machines through horse racing, when they're then available in other locations?

Mr Biemann: Definitely there would be some cannibalization from the sites on racetracks to betting in bars. We are not opposed to the expansion of VLTs per se into the hospitality industry. Our position is that we would like some study done, a step-rated introduction, so that we can study it at first hand before we expand to phase 2 and phase 3.

Mr Ramsay: So you would be asking the government to slow down a little bit and maybe do an overall gaming strategy, some impact studies, before they go to phases 2 and 3.

Mr Biemann: We haven't studied that. I'm not competent to comment on that. We haven't studied what the damage would be. It's just that intuitively we know the racetracks are a responsible initial place to introduce them and gauge it, because the environments are so controlled and distinct.

Mr Ramsay: So it's a concern.

Mr Biemann: Yes.

Mr Kormos: I've spoken about this several times today with people representing your industry. I recall the Ontario Jockey Club's opposition to casino gambling at its outset, and then being brought on side but wanting to be able to bid for casino locations. Fort Erie was one of the locations they competed for, wasn't it?

Mr Biemann: I can't personally recall.

Mr Kormos: If other forms of gaming were available to you — blackjack tables, roulette wheels, that sort of thing — would the OJC similarly be prepared to accommodate that?

Mr Biemann: Yes. If the government were to implement that, we would be prepared to accommodate that.

Mr Kormos: As compared to merely accommodating the government — I appreciate that you'd want to give the government a hand in getting its program under way — would you be pleased to see that happen?

Mr Biemann: Our interest is horse racing and the maintenance of high-quality horse racing. That's our mandate. If it's introduced in such a manner that we can have an even playing field, we wouldn't be opposed to it.

Mr Kormos: You've spoken about cannibalization to the tune of what, 30%?

Mr Biemann: Up to 40% is a study out of Lexington.

Mr Kormos: Let's put this in a context. Niagara Falls has got an interim casino being built and you're 15

minutes, 20 minutes away from the Fort Erie track. The Niagara Falls casino will be built and it will be up and going in short order. Do you expect a 30% to 40% drop in revenues at Fort Erie? How does that work? Explain that to me.

Mr Biemann: The up to 40% is a study by Richard Thalheimer out of Louisville, Kentucky. That's where VLTs were introduced right on to racetracks, so the customer had an immediate choice. There are studies that show 10% and 15%, depending on different distances, in smaller markets. Each market is so different, it's hard to gauge, but we would expect something definitely in the double-digit range of cannibalization from the Niagara Falls casino. It's a very potent competitor.

Mr Kormos: Both of them constitute gambling, right?

Mr Biemann: Yes.

Mr Kormos: One is a preferable form of gambling. Why would you lose? Why would you be cannibalized?

Mr Biemann: The more options that people are presented with, they're simply going to have more options. When horse racing was the only game in town, everybody bet at the races. As lotteries and Pro Line and everything else got introduced, it got diluted. There will be a natural dilution simply by adding more product choice.

Mr Kormos: It seems to me, then, it's a matter of simply being able to gamble and people having preferences.

Mr Biemann: I'm not sure I understand your question.

Mr Kormos: If there's going to be cannibalization, if there are people who are going to abandon the racetrack for the slots, it seems to me that those people, whatever percentage they're going to be, are people who would rather bet on slots than on horses, given equal opportunity.

Mr Biemann: That would happen regardless of what other gaming alternatives were brought in. There would be some cannibalization.

Mr Kormos: These are people who would rather bet on something else than horses, in this case, slots.

Mr Biemann: There would be people who would move over from racing to any other form of gaming.

Mr Kormos: Why would anybody want to do that? You're in the industry. You understand the horse racing, horse gambling, horse betting industry. Why would anybody abandon the horse race —

Mr Biemann: Perhaps for the same reason you don't go to the same restaurant every night.

Mr Kormos: Yet it's only to the tune of 30% to 40%. Clearly, there are some who would remain committed and whose preference is to bet on horses.

Mr Biemann: Yes, a large percentage is devoted to racing only.

Mr Kormos: But your business is about gambling, isn't it?

Mr Biemann: Our business survives because of gambling.

Mr Kormos: And the survival of your business depends upon promoting gambling.

Mr Biemann: It's a complicated question. Our revenues come from parimutuel wagering.

Mr Kormos: Gambling.

Mr Biemann: Which is gambling.

Mr Kormos: Yes. And I appreciate that there are various ways of doing it. You've got ad campaigns, you've got brochures, you dress up and clean up one racetrack or another, you'll put in a better dining room and promote that, but at the end of the day what you want is to get people there and have them wagering, don't you?

Mr Biemann: Yes.

Mr Kormos: That's the nature of the business, from the economic side, isn't it?

Mr Biemann: Yes.

Mr Kormos: Similarly, from the point of view of the slots industry — and there's nothing in itself offensive about this, but the nature of slots, and most of us are familiar with them in one way or another, is to get people to pump as much money into them as possible, isn't it?

Mr Biemann: That would be the objective of the operator.

Mr Kormos: Yes. And one of the neat things about slots, from a profit-making point of view — in the restaurant industry, for instance, you've got to turn the table. Maybe you haven't had the experience of managing a slot operation but you don't want the machine sitting idle, do you?

Mr Biemann: No. That wouldn't make sense.

Mr Kormos: You want to see coins being pumped into it.

Mr Biemann: That's the purpose of it.

Mr Kormos: And the more the merrier.

Mr Biemann: I don't necessarily agree with that.

Mr Kormos: I agree, it isn't very merry, but the more, the more profitable.

Mr Biemann: I think a balance has to be struck, and that's the purpose of these hearings.

Mr Kormos: What kind of payout should Ontario slots have?

Mr Biemann: What kind of payout? As in per cent return to a customer?

Mr Kormos: You've got it.

Mr Biemann: In my opinion, we should have a very healthy payout to compete with the inevitable casinos coming in on the Michigan, New York side.

Mr Kormos: What kind of payout do you think would be a healthy one? Don't forget, the wagering on horse betting, somebody told me earlier here today and confirmed my suspicion, is one of safest bets in town in terms of the highest payback, right?

Mr Biemann: Yes.

Mr Kormos: You've got slots, and what kind of payout would you expect in view of the fact that you're juxtaposed to parimutuel betting on horses? What kind of payout would be one that's going to make your slots competitive?

Mr Biemann: Do you mean the return to the bettor?

Mr Kormos: Yes.

Mr Biemann: On an average bet?

Mr Kormos: Yes.

Mr Biemann: Higher than 90%.

Mr Kormos: Higher than 90%.

The Chair: Thank you, Mr Kormos. Time is up. Thank you very much, sir, for your attendance here today.

1620

B'NAI B'RITH YOUTH ORGANIZATION

The Chair: Our next presentation is from the B'nai B'rith Youth Organization, Mr Gary Gladstone, director of charity. Welcome, Mr Gladstone. You have 20 minutes, including all questions, and you may proceed.

Mr Gary Gladstone: Good afternoon. My name is Gary Gladstone and I'm the director of charitable gaming for the B'nai B'rith Youth Organization, as well as being a board member of Charities First Ontario and the chairman of the Mayfair Downsview Bingo Sponsors Association, representing the 35 charities which operate weekly bingo sessions at Mayfair Wilson Avenue.

The B'nai B'rith Youth Organization, BBYO, is the world's largest Jewish youth group, with chapters in Canada, the United States and around the world offering youth between the ages of 13 and 18 the opportunity to learn leadership development skills in independently operating units. In Ontario, BBYO is heavily reliant on charitable gaming to meet its funding needs. We have an extensive break-open, or Nevada, lottery ticket program, bingos, charitable casinos and the occasional raffle.

Charities First Ontario, CFO, as I'm sure you are aware, is an independent umbrella group of charities involved in all forms of charitable gaming. Our chairman, Jeff Wilbee, will be making a separate presentation to you next week. BBYO fully endorses CFO's position on Bill 75.

I thank you for the opportunity to speak on Bill 75, An Act to regulate alcohol and gaming in the public interest, to fund charities for the responsible management of video lotteries and to amend certain statutes related to liquor and gaming. This afternoon I would like to address the following points and then it will be my pleasure to accept questions from you.

Charities must be involved in all stages of the decision-making process. A comprehensive gaming policy must be established. Charities must play on a level playing field. BBYO is in favour of permanent site charity casinos. BBYO is in favour of a controlled implementation of video lottery terminals, VLTs, at the racetrack, charity casinos and bingo halls. BBYO believes that further study is required before VLTs are permitted into other age-controlled premises. BBYO believes that charities should be consulted with regard to the distribution of funds.

The purpose of this act is to fund charities through responsible management of video lottery terminals. Currently, BBYO receives funding from many forms of charitable gaming as indicated above. I am sure you will agree that it does not make sense to introduce a new form of gaming without knowing how it will affect all other forms of gaming. It is for this reason that I feel very strongly that a comprehensive gaming policy covering all forms of gaming — charitable, racetrack, OLC etc — should be developed immediately.

It is important to note that the government of Ontario is both the regulator — the Ontario Gaming Control Commission, soon to be the Alcohol and Gaming Commission of Ontario — as well as the major competitor, the Ontario Lottery Corp, to charitable gaming in the

province. The OGCC regulates three-day Monte Carlo events; the OLC has permanent site casinos. The OGCC regulates break-open ticket sales; the OLC has lottery tickets etc.

In all of the following discussions it is important to keep in mind that charities must play on a level playing field and must be an equal partner in all decisions being made. Charities are a vital stakeholder in all forms of charitable gaming. To put it bluntly, without charities there is no charitable gaming. Premier Harris requests that we do more with less and requests that charities pick up the slack. Let's ensure that we are not in the position of doing less with nothing because all revenue sources are dried up.

BBYO is in full support of the announcement in the budget that there will be permanent site charity casinos in Ontario. It is about time that the three-day floating crap game be replaced with a more permanent and responsible gaming scenario. It is imperative that charities be involved in the decision-making process as new terms and conditions are created to ensure that charities are in the driver's seat and that the charities are benefiting from charitable gaming at the same time that the operators are allowed to make a living and various levels of government receive their fair share.

BBYO supports the staged implementation of VLTs at the racetrack, the permanent site charity casinos, and in bingo halls. It is our belief that VLTs at the racetrack and at permanent site charity casinos will enhance revenues for all concerned without a severe degradation from other sources. It is also our contention that VLTs be allowed in bingo halls at the same time as permanent site casinos. Bingo halls are already age-controlled premises where gaming is taking place.

I would advise against a further implementation into all age-controlled premises — bars, restaurants, hotels etc — as this will have significant negative impact on the vast majority of charities raising funds through break-open tickets. As well, it would encourage patrons to visit these particular age-controlled premises on a more regular basis to gamble and perhaps overindulge in both alcohol and gaming, leading to increased problem gaming.

One of the most perplexing problems in my mind is the distribution of proceeds from VLTs in general. I have discussed this issue with many colleagues and we have yet to come up with an equitable format to ensure that all charities — local, regional, provincial and national — that operate in Ontario will receive adequate funding to compensate for lost gaming revenues as well as enable new charities to receive funding.

It is imperative that charities be consulted as any and all decisions regarding VLTs are made. Charities must be in the driver's seat at all times. It is BBYO's contention that Charities First Ontario is in a unique position to assist the new Alcohol and Gaming Commission with all elements of charitable gaming regulation and enforcement.

To recap, I have indicated that charities must be involved in all stages of the decision-making process. A comprehensive gaming policy must be established. Charities must be allowed to play on a level playing field. BBYO is in favour of permanent site charity casinos. We are in favour of controlled implementation of

VLTs at the racetrack, charity casinos and bingo halls. We believe that further study is required before VLTs are permitted into other age-controlled premises. And we believe that charities should be consulted with regard to the distribution of funds.

Thank you very much for your time. It would now be my pleasure to answer any questions you may have.

The Chair: Thank you, Mr Gladstone. Each caucus has approximately four minutes. Mr Kormos.

Mr Kormos: Thank you, Chair. Mr Crozier may have been first, but —

The Chair: No. You should have been first last time. We came back to you.

Mr Crozier: My apologies. Thank you for accommodating me.

The Chair: You're going to go last this time.

Mr Kormos: And the last shall be first.

As you know, we've heard from a number of charitable organizations, organizations that rely upon fund-raising and, as often as not, more and more so, bingos, break-open tickets, Nevada tickets or Monte Carlo nights for their fund-raising. Again, to recap it, I think it's consistent that they were fearful of casinos — a whole lot of us were — and the impact this would have on the fund-raising capacity. As it was, there was only one, and now there's two, and soon there will be three. So that's spreading its tentacles more and more.

With this proposition of slots, 20,000 of them across the province, two for every 1,000 population, give or take, one for every 550 people, it means, heck, in smaller-community Ontario it will probably be all that much more dramatic, because it means in a community like where I live, Welland, 48,000 people, 87 slot machines throughout the city at the end of the day. My impression is that you're concerned that slots are a particularly lucrative source of funding. Is that fair to say?

Mr Gladstone: It has been proven that one of the reasons the VLTs are so successful is much like video games when they first came out, because of the instant gratification, the instant chance of win, the rapid play of the game.

Mr Kormos: So it's not as if you're going to be content with being told you can run all the blackjack games, 21, and all the roulette wheels you want but the government's going to keep control of slots — mind you, it will be the private sector, in all likelihood, that will keep control of slots — because you don't see that as a level playing field either. If you're stuck with blackjack, 21, and roulette wheels and somebody else gets the slots, that's not a level playing field to you, is it?

Mr Gladstone: I wish I could have roulette wheels. I'm not permitted those.

Mr Kormos: Okay, but 21, blackjack, that's not a level playing field for you?

Mr Gladstone: No.

Mr Kormos: I was thinking of that fund-raiser down on King Street in Welland, upstairs in the firehall. That's where I saw the roulette wheel. My apologies.

Mr Flaherty: Now they're in trouble.

Mr Kormos: Are you kidding? They've been doing it for decades.

Mr Rollins: They will be tomorrow.

Mr Kormos: Many a Monte Carlo night long before Bob Rae ever introduced casinos to Ontario, let me tell you, friends.

A level playing field would also be achieved if there were simply no slots at all, wouldn't it?

1630

Mr Gladstone: That wouldn't be the case because there currently is not a level playing field. If you take a bingo hall, the charities in a bingo hall may only advertise a maximum of 1% of their total prize board. If you take the Ontario Lottery Corp, they may advertise until they go bankrupt if they so choose.

Mr Kormos: I'm hard-pressed to see the Ontario Lottery Corp going bankrupt.

Mr Gladstone: I rest my case.

Mr Kormos: Again, if there were no slots at all, that would address the issue of inequity vis-à-vis slots and other games.

Mr Gladstone: Between that, yes, but it would not help the level playing field and it would not have a policy in place regarding all gaming within the province to have one concerted goal so everyone in the province would know where we were going with all the stakeholders — not only those involved with charitable gaming, but our compatriots from the racetrack, from the OLC etc.

Mr Kormos: You advise against slots in places other than bingo halls —

Mr Gladstone: Casinos and racetracks.

Mr Kormos: — casinos and racetracks. You advise against it. Obviously part of that is motivated by, again, the enhanced competition that would be created.

Mr Gladstone: Right. And I'm not only advising against; I'm suggesting that when the policy plan perhaps could be fast-tracked and is in place, we could look at it a bit more carefully. But until such time, I do not believe we would be in a position to cope with the problem gaming and I do not believe we would be in a position to cope with the increased play in those machines that would then take away from all other forms of charitable gaming.

Mr Kormos: So in part again because of the unfair competition it would create, but also in no small part because you perceive some social dangers in the widespread placement of these slots.

Mr Gladstone: Yes, no question.

Mr Kormos: Tell me about that, please.

Mr Gladstone: I don't have any numbers and I don't have any studies, but —

Mr Kormos: Fair enough. What's your gut instinct? You've obviously conducted some Monte Carlo nights. I bet you have.

Mr Gladstone: There is a reason why the B'nai B'rith Youth Organization is a member of an organization such as Charities First Ontario: to ensure that when we're discussing gaming issues around the table, problem gaming is also looked at and so some funds are diverted that way to make sure the so-called problems we would create by generating funds are also looked after on the other end.

Mr Flaherty: Mr Gladstone, thank you for coming today and making your very lucid presentation. I wanted

to comment on the consultation issue. Certainly the government is committed to the consultation process, this being part of it. A number of the concerns that you've raised I'd like to discuss with you in terms of dollars for charities. A number of the concerns you have raised, however, deal with implementation matters that are not part of Bill 75, which is the bill this committee is working on now.

Bill 75 sets up the legal framework which will give the government the ability to proceed with certain initiatives, but it certainly doesn't have the provisions in it that will be as a result of further consultations about which charities qualify and which don't and that sort of thing, which are some very important matters, as I'm sure you appreciate.

If I could turn to the issue of funding now, I take it that you're in favour of increasing the dollars available for charitable causes through the use of VLs and the other gaming initiatives in the act?

Mr Gladstone: Absolutely.

Mr Flaherty: The commitment in the May budget was up to \$180 million in increased funding for charities arising out of these new initiatives, and specifically with respect to the Monte Carlo situation — these are the roaming Monte Carlo events that seemed to be one continuing Monte Carlo night — the information I have is that they're producing about \$10 million to \$15 million per year and that with the new charity gaming halls, which I gather you favour, the permanent sites —

Mr Gladstone: Very much so.

Mr Flaherty: — the estimate is that will be increased about 10 times. I take it that's satisfactory from your organization's point of view?

Mr Gladstone: I'll take your word for the numbers and the other issue with regard to the charity casinos. Again, we haven't seen anything of how the revenue splits will work and who will get how much and what have you, but to ensure, again in consultation with the charities, that the charities are not looking for handouts, that they are looking, as was indicated earlier by a fellow member of Charities First with the girls club of Peel, that the charities want to earn their funds, that they don't want to have to walk up to someone with their hand out and say, "Please give me money I need."

Getting back to the issue of funding of the VLTs, although not part of the bill, when you're discussing \$180 million, that's a lot of money to be distributed, and a very major concern is how those funds will be distributed and what is the mechanism that will be used and how will the charities, particularly those affected by the loss of break-open ticket revenue, which is where we feel it will harm the most once they're in stage 3 of the implementation, how will those charities get, as well as new charities from off the block who perhaps don't have a break-open ticket program but have a great need for funding?

Mr Flaherty: I certainly agree with the need for continuing consultation with respect to the implementation aspects, which are not addressed in the framework, which is the bill, which is one of the reasons for this staged and controlled introduction of VLs, which is

contemplated, so that there'll be opportunities to review the status and progress in that regard. Good luck to your organization in the work you do.

Mr Crozier: Good afternoon, Mr Gladstone. What I gather was just said on behalf of the government is: "Trust me. We're going to get to this, but first we're going to get the VLTs in." You gave us a list in recap- ping of those things that you think must be done and I don't know whether they're in any particular order, but first is that charities must be involved at all stages of the decision-making process; and second, a comprehensive gaming policy must be established. Has your organiza- tion, or, to your knowledge, Charities First or anyone you're involved with been consulted to this point with regard to the introduction of video slot machines?

Mr Gladstone: Charities First Ontario sent out a fair bit of information to all MPPs in the House requesting a gaming policy and giving what information we had on the video lottery terminals. I don't think there's been much consultation coming the other way.

Mr Crozier: How would you characterize the planning and implementation of gaming in Ontario, as far back as you're familiar with it, to this point?

Mr Gladstone: Represented evenly by all parties, the consultation process with the charities, to the best of my knowledge, has not been exemplary.

Mr Crozier: I appreciate that and I needed your comments in that area. When it comes to the charities, that you must play on a level playing field, to this point, and the point I guess has been made before, you've had a stake in raising your funds, you've been physically involved in raising those funds. You don't feel that you maybe have the same opportunity with regard to the distribution of these funds down the road. Is that correct?

Mr Gladstone: Yes, and no one knows how the funds will be distributed, so yes.

Mr Crozier: That, I would think, and I would be interested to see if you would agree with me, is going to be a gargantuan task when you consider all the charitable interests in the province of Ontario at the present time.

Mr Gladstone: Yes, and especially when you realize that nowhere in the act is the word "charity" defined.

Mr Crozier: So it's going to be difficult, that every- body gets their fair share.

Mr Gladstone: That's right.

Mr Crozier: You would want to work very closely with the government on that?

Mr Gladstone: Absolutely.

Mr Crozier: At the same time, and I appreciate your position in representing your organization, you will want to have your organization's best interests at heart.

Mr Gladstone: That's correct, which is why I am recommending that BBYO, in particular, not sit down at the table, but our umbrella association group, for lack of a better term, Charities First, be sitting at that table to ensure that all charities are properly looked after.

Mr Crozier: I think that's a fair position to take and I appreciate the points you've raised in your submission today.

The Chair: Mr Gladstone, thank you for your sub- mission today.

1640

HEALTH PROMOTIONS STRATEGIES INC

The Chair: Our next presenter is Health Promotions Strategies Inc. Mr Iversen, please take a seat.

Mr John Iversen: Thank you, Mr Chairman, for allowing me to make this presentation today. My name is John Iversen. I'm president of Health Promotions Strat- egies Inc. We are a gaming service supplier in the province of Ontario as well as a gaming equipment supplier. We have a payroll staff now of 23 and we have sales of about \$2.3 million, with some 220 provincial and municipal clients in the charity fund-raising business.

I believe, since there are 108 registered gaming service suppliers in this province, that we are fairly representative of those types of small businesses. In fact, we were the first gaming service supplier in the province and I know we speak from where we come with the knowledge since we've been around since this business was first allowed under the act.

I'm trying to keep the perspective mainly as a small business. I know you've taken lots of presentations from others, particularly with respect to those that are against VLTs and those that are for and so on. I've tried to put it in the perspective of the effect it may have on us as a small business and on our colleagues in the same indus- try.

Last year, we raised approximately \$8 million for not- for-profit organizations. The bulk of this money through our some 220 charity clients was returned to their respective communities through charitable works. We are employed throughout the entire province.

Over one half of our charity clients — we've done this through our own statistical survey — that is, in excess of 100 charities, depend to a minimum of 50% of their revenues from break-open tickets, and some of them to a maximum of 100% of their revenues from break-open tickets. These are particularly the smaller ones. Any decline in this activity could have a severe impact on these charities, particularly the smaller ones. I relate to the effect that they might be out looking for other types of avenues or vehicles they can use to replace any reductions in the break-open ticket area. Particularly, they will be looking for revenues from VLTs, which we understand will not be so readily available to many of them.

Our company is particularly concerned not only about our ability to generate revenues for these charities, but also to survive as a small business. We've seen the impact in other jurisdictions, such as Alberta, where we have a sister company, where VLTs have been intro- duced, namely, that the sales of VLTs has dropped.

Just as an aside, we recognize that in the not-too-recent past, the government stopped funding charities and many charitable and social aspects of our society, and encour- aged private industry to take up the task. Private industry, through companies like ourselves, have in fact done that. We see the introduction of VLTs as somewhat an attack on our small business industry. It's a threat to us, particu- larly at a time when we have taken up that cause. I looked back in the statistics of the Ontario Lottery Corp in 1992, and at that time they funded some \$350 million,

of which \$16 million was returned to charities. I think going forward from that time, some of the same type of formula will bear out, and I'm not sure that the introduction of VLTs will necessarily change that formula.

It is fair to say that the government continues to advertise that it is going for downsizing and privatizing, but we are very much part of that downsizing and privatizing and we see this as a reversal of the trend.

I understand and I have understood from the beginning that this act is an act that has already been passed. However, we are extremely concerned about the proliferation of VLTs and the proliferation of this reversal of trend, as we are just in the mere fact that it's happened.

Our company, as I said, was one of the first ones to be licensed and our collective experience to date among our own staff and salespeople has caused us to believe — and we are doing this through our sister companies in Alberta as well — that the introduction of VLTs in Ontario could impact our sales by a decrease of as much as 40%.

Our main yardstick centres around the fact — and in our discussions with charities — that we are convinced there is a pool of moneys in the province available in the area of gaming and this pool is finite and only shifts from one type of activity to another. While certain proceeds from VLT gaming are earmarked for charitable purposes, the total amount that will be available to the charity clients we deal with will inevitably decrease.

Break-open tickets right now provide 12.5% of gross sales going directly to the charities, and other than to show where they are spending those money, there is little or no bureaucracy attached to that. In other words, break-open ticket revenues for charities are not subject to onerous granting procedures, which we understand they might be under VLTs.

We must also remember that the sale of break-open tickets is done through some 10,000 small private businesses and retail sites throughout Ontario. Our own calculations exponentially, through our own statistics and our own offices, show that some \$96 million is now being threatened to small — I call them ma and pa — retail outlets, convenience stores for the most part.

We see that the consequence of this is that those people will look and lobby for a piece of the VLT business or some other compensation so that they can make these moneys up. I can tell you that with many of them, they represent a very significant part of their earnings now. If they start to lobby for more participation, either in VLTs or whatever, we will then have a proliferation of them and we will have a threat, inasmuch as right now, in our industry, we see these little break-open tickets as being an entertainment value and of very small financial consequence to the buyer. They're a 50-cent charitable type of gaming, but it is not the kind of gaming we see that is being introduced such as in casinos and so on. It's quite different.

We feel that VLT introduction will put pressure eventually on these types of activities that we do to raise the prize board. We will have to start offering bigger prizes and so on in order to compete for that pool of money. This brings in a much higher and riskier level of gaming in the province of Ontario.

The government should expect that break-open ticket retail sales will also want VLTs, thus causing exponential

growth with its consequent effect on family income, particularly at the low-income and welfare levels. I must say to you that our experience as a gaming service supplier is that the largest purchasers or the most significant purchasers of our type of product at the 50-cent level are the low-income and welfare levels. We are justified we feel, of course, because they themselves are the recipients of much of the charitable work this goes to. I would not want to see, and we would not want to see as an industry, that this now becomes a much higher and riskier level of playing.

Any threat to the break-open ticket industry is a real and direct threat to the community-based charitable activities and particularly to the small business sector we represent.

I have included in my submission the statistics, which I'm sure you already have from other sources, that were provided by the Ontario Gaming Control Commission that indicate the number of people who are involved in our sector, the break-open ticket area.

To make my cause one more time or to drive home my point, we see this as a significant threat to small business, the business that has taken up the flag of the government's initiative to downsize and privatize.

Those are my comments and I welcome any questions.
1650

Mr Frank Klees (York-Mackenzie): I find it interesting that you characterize the break-open ticket as entertainment. Could you explain to me where the entertainment value is in break-open tickets?

Mr Iversen: First of all, in our particular company and in many companies we call them "charity game tickets." We actually do not call them "Nevada tickets" or "pull tickets" or, as you call them, "break-open tickets." "Break-open tickets" is how the act reads and describes them, but in fact we call them "charity game tickets."

We believe this has entertainment value to the buyers who buy them. We've watched them play these games. They are concerned with the type of product, the way they can hold them in their hands, the fun aspect of winning \$1, \$5 and so on.

Mr Klees: Okay, I think I understand the direction you're going. You indicate that the majority of the people who buy these tickets, be they 50 cents or whatever, by your own admission, are people who really can't afford it. Isn't that right?

Mr Iversen: No, I didn't say that, sir.

Mr Klees: Well, you said that the largest number of people who buy these are welfare recipients and low-income families.

Mr Iversen: Correct.

Mr Klees: We've heard for the last number of months a tremendous uproar about the fact that those are the people who can't afford to pay their rent, can't afford to buy groceries. Can you explain to me where the morality is in promoting a business that actually targets that low-income family for the money that should go to food?

Mr Iversen: All right, sir. I will preface by saying that I didn't realize I was coming here to speak about the morality of it today, but I'll try to do justice to your question. This is why we look at the entertainment value of it. To the extent that a higher-income person can

afford entertainment value at a much higher level, the low-income person can afford entertainment at a 50-cent level.

Mr Klees: Not if they can't pay for their groceries, not if they can't pay for their rent. Surely there's something wrong with the picture. I would agree with you that the higher-income person, the higher-income family, surely can afford to make a choice of the kind of entertainment they want to have. Hence, video lotteries.

But I'd suggest to you that as I listened to your presentation what I had a problem with was that I hear you arguing about market share, and you're arguing about market share on the backs of people who can't afford to even be in the market. I don't dispute that with you. In fact, I think the problem in this market is at the lower end, at the 50-cent level, that appeals to those people not for entertainment, I would really question that, but I think the reason someone on welfare pays 50 cents for a ticket is for the hope of getting off welfare through a big win, or through a little win. I have a real problem with the argument that you're going to oppose video lotteries because you're going to lose market share on the backs of those people.

Mr Iversen: Let me try to answer that, sir. Number one, the break-open ticket industry at the 50-cent level does provide, in our view, entertainment value to the people. We've watched them; I don't know if you have, sir, and I don't mean to be flippant about it.

Mr Klees: Well, I've watched them, but I wonder what their kids are doing without the milk that they need for that 50 cents. I wouldn't want to be part of that industry, I tell you honestly.

Mr Iversen: That's fine.

The Chair: Excuse me, Mr Klees, your time is up.

Mr Iversen: The payout, Mr Chairman, 73.3% of the moneys that are spent right there at the table or right there at the cash dispenser goes right back into their hands.

Mr Klees: And 25% they leave there.

The Chair: Thank you, Mr Klees and Mr Iversen.

Mr Kormos: I'm pleased Mr Klees is finally coming around. He's starting to inquire about entertainment value. You see, the problem is that the demographics of who uses slots in this country are remarkably similar to the demographics of who uses break-open tickets — I'm sorry, charity game tickets. That's okay, because they call slot machines video lottery terminals, so I understand why people would want to attach nomenclature that imparts a particular image. In the eastern provinces' slots, 80% of the users are male, the majority under 45, with a high prevalence among adolescent males. Women are increasing as users. The women users fall into an older age category. The numbers are increasing among retirees. The majority of individuals playing the slots in the Atlantic provinces are from low socioeconomic backgrounds, the working poor and the unemployed, and that's common to the Atlantic provinces.

In Manitoba, the profile of the user is with grade 12 education or less and an average yearly salary between \$20,000 and \$24,000, with a growing number of women.

In Saskatchewan, average yearly income of slots is \$30,000 or less; 43% have not completed grade 12, and

17% of the problem gamblers were unemployed, the ones with acknowledged problems.

In Alberta, 62% are high school graduates or less, with a somewhat higher top in the average annual income — \$25,000 to \$50,000 was the profile of the gambler.

In effect, what the heck, charity gaming tickets are modelled on slots, the three cherries, the three sevens. They're modelled on slots. It's effectively much of the same buzz, isn't it, without needing a machine and putting a coin in?

I was amazed though, because when I saw Health Promotions Strategies Inc on the list of presenters, I did not anticipate a company of your sort, with offices in Burlington, Calgary and Scottsdale, Arizona. How did you come about with it? Were you involved with American fund-raising initially for health care?

Mr Iversen: No.

Mr Kormos: How did you come about with the name Health Promotions Inc?

Mr Iversen: Because originally all, but now over 90%, of the charities that we helped to fund are in the health-related industry.

Mr Kormos: Is that in Canada?

Mr Iversen: No, in Ontario.

Mr Kormos: In Ontario.

Mr Iversen: Right, and our reach beyond Ontario is simply that some of our charity clients are asking us to assist them outside of Ontario. There's nothing more to it than that, nothing particularly sinister.

Mr Kormos: Sure. I was intrigued by it. I just wondered what the origin of that was. We've got a gross revenue of \$1,310,400,000. That's in Canada or Ontario?

Mr Iversen: Ontario. Break-open tickets, those are all Ontario statistics.

Mr Kormos: Big bucks.

The Chair: Our time is at an end, Mr Kormos. I'm sorry.

Mr Iversen, I thank you very much for attending here today and presenting your —

Mr Iversen: Mr Chairman, I never did get to answer the very last question. I thought —

The Chair: We don't have time. There's a viewpoint of some people on this committee that the poor are not entitled to be entertained, I would assume. That's what I understood from it, and I'm sure we'll be dealing with that during the next three weeks. I thank you very much.

Mr Klees: Mr Chair, that's unfair.

ONTARIO ARTS NETWORK

The Chair: Our next presenter will be the Ontario Arts Network. We have a written brief from them. Mr Pat Bradley.

Ms Pat Bradley: Actually, that's Ms Pat Bradley.

The Chair: Oh, Ms Pat Bradley.

Ms Bradley: Thank you, Mr Chairman, committee members.

My name is Pat Bradley. I'm the executive director of the Professional Association of Canadian Theatres and the co-chair of the Ontario Arts Network. My colleague Anne Kolisnyk is the executive director of the Ontario Association of Art Galleries.

We're here on behalf of the more than 30 organizations that make up the Ontario Arts Network. We represent thousands of organizations and tens of thousands of Ontario artist citizens who make up the cultural framework of this province. We represent theatre companies, centres culturels, art galleries, dance organizations, community arts councils, symphonies, opera companies, community choirs and the artists who work in those organizations, performers, visual artists and writers. These artists and arts organizations are in every community in Ontario no matter how small and their audiences are in every community in Ontario.

1700

We're not here to give you advice on how the new video lottery terminals should be run or to comment on whether Ontario should indeed embark on this venture. We know there are many with more knowledge and experience than we have and we know that this committee will listen to the input of people from communities around Ontario and make informed decisions. I understand that the focus of these hearings is not on the use of the money, but I think it needs to be brought up at this time.

We're here to ask you to think about what this government will do with the profits of this new venture. We understand that the current plan is to direct approximately half to the provincial treasury to offset the budget deficit and to direct the balance to Ontario charitable organizations.

We urge you to embed this direction in the legislation or in regulation. It is the communities of Ontario that will be providing the money that feeds this new system of revenue generation and it is the communities of Ontario that must receive the benefits. Community ventures, whether sports and recreation facilities, local historic boards and museums, community action and social service groups and arts and cultural organizations, must be guaranteed in legislation the funds generated by the VLTs.

It is these groups and organizations that have borne much of the brunt of the budget cutting that the government and people of Ontario feel is necessary. Speaking for the arts community, we are aware that we must take our fair share of the cuts, and we have, but there comes a point when the fabric of our culture is threatened.

There is not a developed nation in the world that does not have a comprehensive system of support for arts and culture either spearheaded or supported by government. These systems range from the European model, in which direct government support of the arts dwarfs that of our combined federal, provincial and municipal governments, to the American model, where indirect government support leverages huge sums of money from corporations as well as indirect subsidies such as preferential postal rates and forgiven property and other taxes.

Canada and Ontario are betwixt and between and recent government cuts of direct funding have had a drastic effect on the ability of arts organizations to survive. Those cuts have been instituted without putting into effect countervailing support measures such as are available to US arts organizations. It's all very well to urge arts organizations and other charities to derive more

of their income from the corporate sector, but the odds of success are decreased without proper support systems.

The arts and cultural community across the province, in common with other charitable organizations, has learned how to adapt to the new realities. We're not here to whine, but it's impossible not to imagine the effects on communities across Ontario when there is a 30% cut to the Ontario Arts Council's budget for granting to artists and arts organizations.

Therefore, Bill 75 gives the Legislature an opportunity to continue to build culture in communities across the province by directing a fair share of the profits of the video lottery terminals to arts and cultural organizations. There are a variety of mechanisms available including the government's Ministry of Citizenship, Culture and Recreation which helped build a cultural and recreation infrastructure across the province many years ago when provincial lottery money was first a source of government revenue. The facilities that were built with those funds, the organizations that were assisted at birth, the artists and cultural workers who developed then are at great risk today. A new source of funding for a cornerstone of community life in Ontario is absolutely essential.

I'm going to turn it over very briefly to my colleague who will speak rather more pointedly to one particular arts community, the gallery community.

Ms Anne Kolisnyk: The Ontario Association of Art Galleries represents the public galleries in Ontario, the most notable of which is probably the National Gallery of Canada. But they do extend to the north, to every region of the province; in fact, to 50 cities, towns and regions of Ontario that have and have supported generously and have built a public art gallery.

They've been suffering from the cutbacks, as has the whole arts infrastructure, and they've been turning more and more to bingo and to break-open tickets to survive. Further cuts are on their way next week of 34% to their operating budgets from the Ontario Arts Council. There's no way they can make that up. There's no way they can make that up in this timetable, and so they're going to have to look for more diverse revenues anywhere they can. I've been getting crisis calls all day today as this news comes out about the cut from the arts council.

I do think these institutions are important. I think they're important because the communities that host them built them and invested a lot in them. They're really anchored out there and I hope you will find a way to direct additional revenues to the arts in Ontario. Thank you.

The Chair: Thank you. Could you identify yourself for the purpose of Hansard, madam.

Ms Kolisnyk: My name is Anne Kolisnyk and I'm the executive director of the Ontario Association of Art Galleries, representing the public art galleries.

Mr Kormos: I'm in a peculiar position because I agree with you about one facet of your presentation, I should tell you folks that, and I disagree with you profoundly about what I see as basically the other facet of it. One, I join you in despairing about the abandonment of arts and culture, as it is now, by both major levels of government, provincial and federal, because, yes, I think these are important public assets that have to

be maintained and should be maintained with a public spirit and democratically by virtue of the funding that has been traditional. To suggest that everything was okay may not be correct. I concede that everything may not have been okay, but so what? That doesn't mean you reject or abandon the prospect of understanding that an investment in arts and culture benefits all of us collectively, all of us individually. It's an investment in our future and it is an investment in our culture as Canadians because we're in a unique position to create a unique Canadian culture, which is a very fluid one, a maturing one and one which is growing and whose future one can't really predict because of that extremely fluid nature of our society.

But I suspect you might know — maybe you don't — that I find it repugnant that we engage in this type of activity — gambling — and the most active type of gambling — slot machines — attacking the poorest, because that's the profile of the people who use slots. It's among the lowest-income people in our society who use slots and who are drawn to them, because they're the quarter machines. Right? They're the quarters. I don't know whether there are any nickel machines in the province. I know in some American jurisdictions, I've been in casinos where there were nickel machines. Let me tell you, sometimes you can look in the eyes, as you walk around the machines, of the folks playing nickel machines and these are people who, as I say, are at the nickel machine because their lifestyle prohibits them from being at any higher range.

So I disagree fundamentally with the government, with the state getting involved in peddling a highly addictive and dangerous form of gambling, least of all to support such important institutions.

The other issue, of course, that has to be dealt with, is that — I'm sure one of my colleagues from the Conservative bench might respond by saying: "Well you know, geez, but we've got to reduce the deficit. This is why we can't afford to fund these things anymore." But you see, not a penny of the money that's going to be raised, and it's going to be millions if not billions, by drawing poor people, lower-income people to slots and getting them hooked — not a penny of that is going to go to reduce the deficit. It's all about the tax break that was promised for the very rich in this province. That's the greatest sadness of it all.

Having said that, I'm confident that this government is going to proceed with its folly, with the insanity of 20,000 slots here in the province of Ontario in every place but casinos. Every place but casinos, because that doesn't count, the casino slots. I'm confident they're going to do it.

We've been dancing in a fog. We've not really had a handle on the numbers. The Ontario Jockey Club thinks there should be a payoff of 90%. That is to say, 90 cents on every dollar that's put in should be paid out. I'm looking forward to seeing what the Minister of Consumer and Commercial — I don't think that fits into their agenda in terms of the economics of it. It would be interesting if it did.

Mr Guzzo: Ninety-five.

Mr Kormos: But here we are. They've obviously had to accommodate various sectors. The government's had to accommodate the race horse industry. The government's had to, and feels, I suspect, somewhat compelled to accommodate charitable organizations, several of which have appeared today and more will be appearing as this committee travels across the province and returns back here to Toronto. There's going to be a real scramble for those dollars and there's great potential, because we haven't been presented with the model as to the divvying up of the cash, the stash. We know there's going to be a whole lot of cash there. The government knows that it wants to have as much of it into its coffers as possible to pay for its tax break for the rich. I mean, it's going to give 2%, which is still a lot of money, to gambling addictions. That's one of the difficult things.

Having said what I have, and indicating quite clearly that I really find it unacceptable that government is engaging in this sort of process to impose taxes on the poor, taxes on the desperate. That's what the gambling, especially this type of addictive gambling, is all about —

The Chair: Thank you, Mr Kormos. If we could go to the Conservative caucus.

Ms Bassett: I was delighted to see your names down here today, making this presentation. I don't want to make a speech and go into the cuts and all of the problems that you're facing, but you did say that the United States corporations who make gifts are given more favourable tax treatment, and we are trying to encourage that with the crown foundation status here. It's not going to make up; it's a step. The federal government is moving and there's a lot of pressure to make them move more.

But it brings me to a question. You mentioned in your last paragraph that there are several mechanisms available that could be partly to helping to divvy up these funds. I wonder, other than the Ontario Arts Council, if there's anything else that you think we should be looking at.

Ms Bradley: Obviously, the most direct mechanisms are the ones that are in place already through the ministry but also through the ministry's agencies: The Ontario Arts Council for most arts organizations; various direct agencies.

There have also occasionally been foundation-type organizations that have been used to funnel government money through. We are as a community looking at what we can do collectively to provide support, sometimes through regranting assistance through organizations like our own, service organizations.

Ms Bassett: So you feel the community would cooperate enough to get together with all the various groups within a —

Ms Kolisnyk: We began to get together and we are fighting to keep the lottery money.

Ms Bradley: We lost that one.

Ms Bassett: All right. I just wanted to know where you were going.

Ms Kolisnyk: TOAN, the Ontario Arts Network, represents these 30 organizations that have been consistently getting together, lowering the barriers — "I'm dance, I have to be privileged; I'm art galleries, I have to..." — and working together on these strategies, yes, absolutely.

Ms Bassett: All right. Thank you. I know my colleagues have other questions.

The Chair: No, I think that's the end of the day. You have one minute. The remainder is Liberal time and they're not here.

Mr Young: I was reading something, but what percentage of your members or your associates are already registered charities?

Ms Bradley: For the organizations like the dance companies, the theatre organizations, the art galleries, virtually 100%.

Ms Kolisnyk: A hundred percent. We also represent individuals who aren't, but where we represent organizations they are non-profit, registered organizations.

Ms Bradley: Non-profit, charitable organizations. They have both statuses.

The Chair: Thank you very much for your presentation here today.

The taxis are waiting and I am adjourning this meeting to 9 o'clock tomorrow in Thunder Bay.

The committee adjourned at 1713.

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

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Vice-Chair / Vice-Président: Mr Ron Johnson (Brantford PC)

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*Mr Gerry Martiniuk (Cambridge PC)
Mr John L. Parker (York East / -Est PC)
*Mr David Ramsay (Timiskaming L)
Mr David Tilson (Dufferin-Peel PC)

**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Ms Isabel Bassett (St Andrew-St Patrick PC) for Mr Doyle
Mr Bruce Crozier (Essex South / -Sud L) for Mr Chiarelli
Mr Jim Flaherty (Durham Centre / -Centre PC) for Mr Tilson
Mr Gerard Kennedy (York South / -Sud L) for Mr Conway
Mr Peter Kormos (Welland-Thorold ND) for Mr Hampton
Mr E. J. Douglas Rollins (Quinte PC) for Mr Leadston
Mr Terence H. Young (Halton Centre / -Centre PC) for Mr Parker

Also taking part / Autres participants et participantes:

Mr Tony Martin (Sault Ste Marie ND)

Clerk / Greffière: Ms Donna Bryce

Staff / Personnel: Mr Andrew McNaught, research officer, Legislative Research Service

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Official Report of Debates (Hansard)

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Journal des débats (Hansard)

Jeudi 8 août 1996

Standing committee on administration of justice

Alcohol, Gaming
and Charity Funding
Public Interest Act, 1996

Comité permanent de l'administration de la justice

Loi de 1996 régissant les alcools,
les jeux et le financement
des organismes de bienfaisance
dans l'intérêt public



Chair: Gerry Martiniuk
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
ADMINISTRATION OF JUSTICE

Thursday 8 August 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ADMINISTRATION DE LA JUSTICE

Jeudi 8 août 1996

The committee met at 0901 in the Airline Motor Hotel, Thunder Bay.

ALCOHOL, GAMING AND CHARITY
FUNDING PUBLIC INTEREST ACT, 1996
LOI DE 1996 RÉGISSANT LES ALCOOLS,
LES JEUX ET LE FINANCEMENT
DES ORGANISMES DE BIENFAISANCE
DANS L'INTÉRÊT PUBLIC

Consideration of Bill 75, An Act to regulate alcohol and gaming in the public interest, to fund charities through the responsible management of video lotteries and to amend certain statutes related to liquor and gaming / Projet de loi 75, Loi réglementant les alcools et les jeux dans l'intérêt public, prévoyant le financement des organismes de bienfaisance grâce à la gestion responsable des loteries vidéo et modifiant des lois en ce qui a trait aux alcools et aux jeux.

The Chair (Mr Gerry Martiniuk): Good morning, members of the committee and ladies and gentlemen. This is a continuation of the hearings of the standing committee on the administration of justice consideration of Bill 76. It certainly is a pleasure to once again be in Thunder Bay. This committee visited Thunder Bay some few months ago in our consideration of the Consent to Treatment Act. We enjoyed the hospitality of your fair city so much, we're back again.

I've been asked to summarize this bill. It's not a long bill but it is rather complicated. However, basically what it does is: Firstly, it establishes an Alcohol and Gaming Commission, which for the first time brings regulatory powers to one commission dealing with both liquor and gambling. Secondly, it legalizes video lottery terminals in a staged process. The first stage would be the introduction of these terminals in racetracks and licensed gaming premises. Secondly, it is envisioned, depending on the recommendations of this committee, that it be extended to licensed liquor premises.

On my left are members of the opposition and third party and on my right are members of the government. Each presenter has 20 minutes, including all questions. The reason for the shortness of time is so that we can hear everyone, because we had a number of requests from all over the province to make presentations. That being said, I think we should proceed.

EAST SIDE MARIO'S

The Chair: Our first presenter is Mr Jon Essa, president of East Side Mario's. Welcome, Mr Essa.

Mr Jon Essa: First of all, Mr Chairman, my name is Jon Essa, if anyone didn't hear it. I'm the operating manager of East Side Mario's located here in Thunder Bay. I want to thank you and the committee members for the opportunity to appear today and speak.

I want to begin today by stating up front that I'm very supportive of Bill 75 as it relates to video lottery terminals and urge the government to implement them in the hospitality sector as soon as possible. We as an industry are in a serious economic situation. I can tell you from a personal perspective the urgency of the situation. Our industry is in serious trouble. Sales are down 20% across the board. We've lost about 100,000 jobs and there have been about 1,400 bankruptcies in this industry since 1992.

I can tell you personally, from our perspective, that if video lottery terminals were allowed to be brought into the restaurant and bar sector of the industry, we would be able to hire another 35 or 40 more employees, expand our operation and generate tourist dollars. A lot of our local and tourist dollars are now going to local border towns or villages, you might say, with local gambling that is Stateside, which is 40 miles away. A town of 200 outside of Thunder Bay generates over \$15 million to \$16 million in revenue — Thunder Bay dollars. We need an opportunity at this point to compete together with them and add value to our operations as individual operators.

The Minister of Finance, in his budget of May 8, said the government was going to allow VLTs to help our industry. Specifically, he said, "We believe that VLTs, if implemented within tight regulatory controls and in limited-access environments, can meet a legitimate entertainment demand and provide a significant stimulus to the hospitality industry." Minister Eves also referred to the 15,000 illegal machines that are out there today.

It's important that the implementation stage for our industry not be delayed and that the timing be as soon as possible following the racetrack and charitable casino schedule. From the government perspective, delaying implementation to our industry will mean the government will not be able to start receiving over \$500 million annually from machines allocated to our sector. Conversely, the illegal, untaxed revenues from the grey machines continue to remain in the underground economy. Specifically, I can relate to at least 300 to 400 machines in this area alone.

From the perspective of a businessperson like me, it means that a delay could very well result in having an initiative that the government intended to help the hospitality industry hurt it. The reason is that during the first stage of implementation, to racetracks and charity casinos, it will create business dislocation. Customers will gravitate to where they can legally play VLTs. We cannot

afford to lose any more business, even for a short time. As well, who knows if customers will ever come back and how often they will come back.

Those businesses close to the new casinos, such as Windsor, Orillia, Sault Ste Marie and now Niagara Falls, or the new charitable casinos, also need VLTs. The casino in Windsor, for example, has had a devastating negative impact on the local hospitality industry there. Further, VLTs will not negatively impact casinos. Dr Marfels from Dalhousie University in Nova Scotia — I've provided you a copy of the study — has proven that. This study was conducted on that issue in that province and has stated that it will not affect casinos. A delay will also mean, as I said earlier, the government will be delaying in moving in an offensive against illegal machines. It is very difficult to try and operate legally, especially in these tough economic times when the competitors are attracting new customers with illegal machines. We need this unfair competition to stop now with those illegal machines.

VLTs work as an attendance generator because they're an acceptable form of entertainment that the public wants. They play for the entertainment, not to gamble. They're part of an evening out. They give us an opportunity to allow consumers to stay longer in our establishments, make them full entertainment centres and have more repeat business.

Independent research confirms this, as I believe you're already aware. I refer to the work conducted in Manitoba by Dr Barbara Gfellner from the University of Brandon. Dr Gfellner found out that the average VLT player plays VLTs for about 30 minutes once or twice a week and spends only an average of \$10. She also said that most people who play VLTs do so on a moderate budget basis and perceive VLTs to be a modest form of risk-taking in an entertainment-oriented social environment. Finally, the overwhelming majority of VLT players reported that the most important reason they went to a bar or lounge was to relax, to be with friends, socialize, meet with people. It's an affordable budget activity that is viewed as recreational on the consumer's part.

Ontario has already a full selection of legal and illegal gambling opportunities. I've already referred to some of these illegal opportunities this measure will help control, but one does not have to go any further than your corner store or bingo hall to find a gambling opportunity. However, just as with the consumption of alcohol, the vast majority of players gamble in moderation and experience no significant gambling problems. A new brand of alcohol does not increase the overall level of alcoholism. With all the existing forms of gambling today — lotteries, sport pools, bingos, horse racing, casinos, break-open tickets — an introduction of a new brand of video gaming will not significantly increase the potential for compulsive or problem gaming in Ontario. Research shows that less than 2% of the population are potential compulsive gamblers and another 3% to 5% may experience some problems.

Tibor Barsony, executive director of the Canadian Foundation on Compulsive Gambling, has said, "Prohibition is not the answer. Education and treatment are." Dr Durand Jacobs, vice-president, US National Council on

Problem Gambling, said in an interview on Canadian television:

"The majority of the population has no problem with gambling. For most folks, gambling is just fun and games, but for a small minority who have a problem it can be devastating, and we have to develop programs to help them," which the government has already committed 2% of all funds towards.

0910

I would also like to take this opportunity to point out that the public supports the introduction of VLTs into our establishments. Our customers are telling us this continually. The traffic that the illegal machines generate at competing locations proves this alone. Independent surveys conducted by research confirm this and independent committees from police associations also confirm this.

On behalf of myself, the employees that I still have today and hopefully will keep tomorrow, and for those I would love to be able re-employ, I urge you and your committee to recommend to the government the quick passage of Bill 75. I would also suggest that your recommendations include to move the implementation of VLTs for industry on to the fast track. Our situation is desperate and we've all been hoping and praying the government would take this progressive step, and we'll be grateful that it has. We need the stimulus of this new form of entertainment. We don't have to speculate as to the outcome. The positive results are already amply demonstrated in Manitoba themselves.

The Chair: Thank you, Mr Essa. All members should have background material headed on the first page Enforcement and Experience in Other Provinces. We left off with the loyal opposition last time, so we'll start with Mr Kormos. You have approximately four minutes.

Mr Peter Kormos (Welland-Thorold): Thank you for the brief reference to the Gfellner report. I appreciate that. That's the Brandon University from Brandon, Manitoba. You read the report and extracted the portions that you did?

Mr Essa: Yes.

Mr Kormos: Where in the report did it indicate that Professor Gfellner suggested that VLTs are not addictive?

Mr Terence H. Young (Halton Centre): On a point of order, Mr Chairman: Will you ask Mr Kormos to treat our delegations with some common courtesy today?

Mr Kormos: Thank you, sir. Where in the report does Professor Gfellner indicate that VLTs are not addictive?

Mr Essa: It says, "Research shows that less than 2% of the population become compulsive gamblers."

Mr Kormos: That's not the Gfellner report. In fact the Gfellner report, on page 18, says that a —

Mr Essa: I'm sorry, sir, I don't have that in front of me to even compare that.

Mr Kormos: I do.

Mr Garry J. Guzzo (Ottawa-Rideau): Just page 18. Don't give him the whole report, Peter, just page 18.

Mr Kormos: The Gfellner report says, on page 18:

"As shown elsewhere, more people gamble when opportunities to gamble are more readily accessible. Thus the accessibility of VLTs places more people at risk for gambling addiction, and for some this will include involvement in criminal behaviour."

Further, Gfellner indicates that "9.3% of VLT players as adults are addictive players, pathological or problem gamblers." That's contained again in that same Gfellner report, indicating a far higher incidence of addictiveness, pathological and problem gambling among VLT players than among other forms of gambling. That certainly is at variance with the level of addictive gambling in the general population.

Mr Essa: Sir, unfortunately I don't have the opportunity or liberty to have that full report in front of me.

Mr Kormos: You've read the full report though.

Mr Essa: I've had excerpts from the full report and seen the full report. The information I've provided to you people as far as gaming goes and addictiveness, yes, I've handed out to you. If you're taking certain excerpts and —

Mr Kormos: No. I'm trying to indicate to you that Gfellner does not indicate what you said she indicates.

Mr Essa: It certainly does say that research shows that less than 2% of the population will become addicted to gambling.

Mr Kormos: And 9.3% of VLT players currently are pathological or problem gamblers, far higher than gamblers in other types of gambling activity, which is the very problem with VLT slots, and that is that they are highly addictive.

Read the Frisch report from the University of Windsor, where his study of adolescents in the city of Windsor indicates that some 8% were already problem gamblers, with an additional 9% — with an aggregate of 17% — having the potential to become problem gamblers. That's 17% of adolescents. We're talking about a generational phenomenon here for whom slots are highly attractive and highly addictive.

Read the Griffiths study out of the University of Exeter, which indicates the high level of problem gambling, addictive gambling, and the attractiveness of slot machines in the UK.

Read Yorke, the Nova Scotia psychologist, who agrees with Frisch and speaks of video gambling having the strongest attraction for potential young addicts, and believes that this should send a cautionary note for those who make public policy.

Read Jeffrey Devereinsky from McGill University —

Mr Essa: Excuse me, sir, would you be able to provide information where I can get that information?

Mr Kormos: They're available at Dalhousie University, at Windsor University and at McGill University in Montreal.

Mr Essa: In my travels, in my business dealings throughout North America, I deal with Carlson Companies, which is a worldwide company, and TRC Restaurant Corp, which along with Carlson, from Thunder Bay right to Minneapolis alone there's three casinos which they condone. Every time I've driven down there I haven't seen any addicts or compulsive liars sitting on the side of the street and causing any problems because they went in there. We've also, in talking to these people when we've talked to casino owners, managers, the compulsive gamblers, it's not something that's learned, it's innate.

Mr Kormos: I'm talking about legitimate research and I'm observing that there is so much zeal and fervour to get into this highly profitable industry that the industry is prepared, just as the tobacco industry is in the United States and throughout North America, just as the liquor and beer industry is throughout North America and probably the world, to distort facts, prepared to misrepresent —

Mr Frank Klees (York-Mackenzie): On a point of order, Mr Chairman —

Mr Kormos: — reality, because of big interest —

The Chair: Mr Kormos, we have a point of order before the committee and you've refused to cooperate. Mr Klees.

Mr Klees: Mr Chairman, I really ask you as the Chair to take control of these proceedings. We're here to discuss the relevancy of a bill that's before us. Mr Kormos, for the last couple of days, has gone on at length — quite frankly, sir, to our boredom — on very general issues.

Mr Kormos: You can be bored —

The Chair: Excuse me, Mr Klees. That is not a proper point of order.

Mr Klees: The point I want to make is that I believe that Mr Kormos is not treating the delegation with respect. This gentleman has come to give input on Bill 75. I believe we should keep the discussion to that point.

The Chair: Mr Klees, I'm sorry, we are now using the government caucus time on that because Mr Kormos's time was at an end. That is not a proper point of order, and we will now move to the government caucus.

Mr Jim Flaherty (Durham Centre): Good morning. Mr Kormos is in good form again today. Mr Kormos knows, if he was listening yesterday, that we had the benefit of the evidence of Mr Room from the Addiction Research Foundation; he also knows from the evidence accumulated not only in Canada but in the United States and Ontario over the last two years that 1% to 2% approximately of the population will develop addiction problems with respect to gambling regardless of the kind of gaming opportunities that are made available to them in the community.

As we know, because the NDP government of Mr Kormos chose to do it, we have casino gambling in the province of Ontario. Not only did they choose to introduce casino gambling, but they failed to set aside adequate funds to deal with the addiction problem of 1% to 2%. Yet we have now the audacity and hypocrisy of a member like Mr Kormos coming here and saying this sort of funding should not, I gather, be put aside when they didn't do it.

Mr Kormos: Oh, please, cite the facts correctly. I voted against casino gambling. I opposed it the same way Mike Harris did, the hypocrite who now wants to become the godfather of gambling in Ontario.

Mr Flaherty: The study by Professor Frisch of the University of Windsor and the Canadian Foundation on Compulsive Gambling indicated that the incidence of compulsive gambling in the population remains stable at between 1% and 2% and does not increase even when a major new form of gambling, such as casinos or video lotteries, is introduced. Those are the facts. Similarly, the

study done in Windsor at the introduction of the Windsor casino found no change in that level of behaviour at 1% to 2%. I'm sure Mr Kormos knows that because he says he's read these studies.

Mr Kormos: Read Frisch. Read Griffiths. What's the matter with you people?

Mr Flaherty: I just did: Professor Ron Frisch. I'll read it again for the member for Welland who seems to have difficulty hearing.

Mr Kormos: Talk about the intergenerational phenomenon.

Mr Flaherty: "No change from 1% to 2% regardless of the introduction of the new form."

Mr Kormos: You're talking about putting slots —

Mr Flaherty: What I'd like to talk about, if I may —

The Chair: Mr Kormos, I don't think anybody interrupted you other than the point of order and I don't think it's fair to interrupt them. If we continue on this course of behaviour, it will be constant interruptions and neither one —

Mr Kormos: A little frankness from the government would be appreciated.

The Chair: Well, that's your opinion. Thank you, Mr Kormos.

Mr Flaherty: If I may direct you to a real problem in the real world dealing with real facts in this community of Thunder Bay, I want to talk about the fact that we have video lottery machines already and that people are using them, and I understand minors are using them.

Mr Essa: That's correct. You can access them in just about any form of business today. I was in the small community of Atikokan last weekend and it was in a florist shop, one of the grey machines. They're in corner stores, gas bars, various types of businesses today.

Mr Flaherty: So these machines are there now. They're not being regulated.

0920

The Chair: Excuse me, Mr Flaherty, your time is up. Mr Ramsay.

Mr David Ramsay (Timiskaming): Welcome to politics, Mr Essa; welcome to our committee hearings. I just want to ask you a couple of questions. I was very alarmed by the figure you gave this morning, that you believe there are up to 300 to 400 illegal machines in this Thunder Bay general area. Is it your belief that these machines hurt your business?

Mr Essa: Definitely.

Mr Ramsay: Have you made a formal complaint to the police about these machines?

Mr Essa: The police are well aware of what is going on with the machines. There has not been a charge laid against any of the operators as of yet.

Mr Ramsay: I want to pursue that just a little bit. Are other people like you, owners and managers of restaurants in this area, making complaints to the police?

Mr Essa: Yes. We did at a city council meeting not more than two to three weeks ago.

Mr Ramsay: So what you're saying is that they're aware of it but nothing seems to be happening.

Mr Essa: They're investigating it as we speak.

Mr Ramsay: They are investigating it, okay.

You were saying that you thought the introduction of VLTs would enable you to hire 35 to 40 additional people at your operation. Is that full-time?

Mr Essa: Divided up by the people it would be about full-time hours, yes.

Mr Ramsay: So they're full-time equivalents up to that. What's your total full-time payroll now, not in money but in people? What would be the full-time number of people you would have?

Mr Essa: Total employees would be near 80. We used to have over 100. Full-time, per se, there are only about 10.

Mr Ramsay: About 10. You're saying you would be able to hire four times the number.

Mr Essa: At least.

Mr Ramsay: That's a very substantial increase to your operation. Would you describe your restaurant? Is it a family restaurant? How would you describe it?

Mr Essa: A casual dining, full-service restaurant.

Mr Ramsay: Do families go?

Mr Essa: Yes.

Mr Ramsay: With the way the government wants to implement VLTs, it will not put them in areas where people under 19 years old would be.

Mr Essa: We'd have a room with a controlled environment. Our liquor laws in Ontario seem to be a lot more stringent than they are in Manitoba, and we have to abide by and worry about regulatory conditions to maintain our LCBO status. The operators have been forced, in Thunder Bay specifically, to abide by these rules. Very tight constraints have been imposed upon us.

The Chair: Mr Essa, the time is up. Thank you very much for your presentation here this morning.

PORT ARTHUR BRASSERIE AND BREWPUB

The Chair: The next presenter is Port Arthur Brasserie and Brewpub, Mr Don Caron, who's the controller of that organization. He has presented the committee with a written brief. You should all have a copy. Good morning and welcome. I ask you to proceed, please.

Mr Don Caron: Thank you, Mr Chair. Before I start I'd just like to comment that you will hear the odd statement that will be a repeat of what the last presenter said.

Thank you for the opportunity to address the committee on Bill 75. My name is Don Caron. I am the controller of 502065 Ontario Ltd, which operates as the Port Arthur Brasserie and Brewpub. We're located at 901 Red River Road in Thunder Bay.

I want to begin today by stating up front that I am supportive of Bill 75 as it relates to video lottery terminals and urge the government to implement them into the hospitality sector as soon as possible. As a member of the hospitality industry, we are in a serious economic situation, and I can tell you from a personal perspective the urgency of the situation. Since 1992, sales are down 20% across the industry and there have been significant job losses and bankruptcies. A brief background on the brewpub follows.

The brewpub has been in business since 1982 and is an operation which provides food, beverage, outdoor recre-

ation, NTN Trivia entertainment and, commencing April 1995, Champions Telewagering. Our business at present is approximately 70% food and 30% beverages. During the past five years we have faced a continual increase in costs coupled with a decrease in sales and returns. The result has been a precipitous decline in profitability. More specifically, brewpub sales have fallen by 13% and our profitability has disappeared. In 1990 the return on sales was 9.65% and the return on assets was 22%. This eroded dramatically during the next five years, until returns for the year 1995 were only 0.09% on sales and 0.18% on assets employed. I'm sure you can appreciate that it is impossible to maintain an operation that returns significantly less than 1% on sales or assets employed.

What we are talking about is the survival of the hospitality industry, as it is at risk under the present environment and requires some form of additional stimulus to survive.

The Minister of Finance in his budget on May 8 announced that the government was going to allow VLTs as a stimulus. Specifically he said, "We believe that VLTs, if implemented with tight regulatory controls and in limited-access environments, can meet a legitimate entertainment demand and provide a significant stimulus to the hospitality industry." We heartily agree with that statement.

Here in a nutshell is the current gaming environment in Thunder Bay under the following issues: (1) illegal machines; (2) cross-border gaming; and (3) demand.

Minister Eves referred to the 15,000 illegal machines presently operating in Ontario, of which 40 are in operation in Thunder Bay, and that number comes from a report from the police chief of Thunder Bay. I'm not sure where he got that information.

Illegal machines are only part of the leakage problem. The scenario in the Thunder Bay area is such that currently a significant amount of activity and funds are committed to cross-border casino operations, VLTs and out-gambling. For instance, there exists a casino at Grand Portage that has been estimated, based on area — a 15,628-square-foot casino and a 2,704-square-foot bingo hall; number of VLT machines, 400; and cross-border traffic — to generate a minimum of \$50 million per annum from the Thunder Bay community, and that's just one example. There are no less than eight gambling venues within a 250-mile radius, most of which are full-blown casinos. The number of easily accessible casinos is growing.

It was recently announced that Casino Express, located in Elco, Nevada, will be accessible by charter for US\$199, including air fare and accommodation. While many individuals go for short stays to Las Vegas, this offer will surely increase the draw out of Thunder Bay. These external gaming venues offer a full gamut of highly sophisticated marketing plans, as Thunder Bay is presently experiencing with Elco, Nevada.

All told, the citizens of Thunder Bay are already spending a minimum of \$100 million per annum on gaming. We contend that this will not materially change with the introduction of VLTs but would reduce the amount of money flowing out of the city. We know there are well-meaning objectors on these issues, and you will

no doubt hear them. We do not subscribe to their thinking, and here's why.

(1) They are telling us VLTs will create gambling junkies or addicts. Established statistical information on VLTs disproves this point. The average VLT player spends approximately 30 minutes on the machines one to two times per week and spends a budgeted amount of \$10 per occasion; 85% of VLT players go to the bar to relax and be with friends. The majority of players budget their VLT spending and consider the activity as a social event where they contact people. Research has shown that fewer than 2% have the potential of becoming gamblers versus 6% becoming alcoholics.

(2) Let us look at the fact that gambling activity already exists. The argument that the introduction of VLTs will have a potentially negative impact on society does not take into consideration the hard reality that they are already in the province on a broad basis and are accessible to Ontario residents within short driving distances in many other cases.

Just as with the consumption of alcohol, the vast majority of players gamble in moderation and experience no significant gambling problems. With all existing forms of gaming today — lotteries, sport pools, bingo, horse racing, casinos, break-open tickets — the introduction of VLTs will not significantly increase the potential for compulsive or problem gaming in Ontario.

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I would also like to take this opportunity to point out that the public and our patrons support the introduction of VLTs into the brewpub's controlled environment. We believe strongly that it is preferable to bring this activity within a controlled environment and to reap the provincial, charitable and institutional benefits involved.

Introduction of VLTs would not cause a real increase in money spent or social issues but would have a significant impact in dollars flowing out of the community across the US border.

We're not saying there are no problems, but we recommend that there is a way to implement with a minimum of problems if established in a controlled environment.

Implementation: To ensure the proper control of VLTs, to provide adequate inspection, to allow sufficient exposure and to control the access and environment for VLTs, due consideration should be given to the number of locations involved. As is the case in most issues, the more controlled the environment the easier to implement and maintain inspections. The installation of a small number of machines in every mom-and-pop operation in Ontario would create a very significant control problem. To minimize the potential for danger in controls, implementation in a limited number of controlled environments is recommended.

We also respectfully submit that there has to be a proper mix of venues where VLTs are located. For instance, if all VLTs were installed exclusively at charitable casinos, this would be extremely detrimental to the wishes of those who genuinely want to use VLTs as familiar environments for recreational entertainment and social outings. We have already proven with telewagering that we can provide in the same atmosphere a family

restaurant environment and a teletheatre. Inclusion of VLTs will not change that situation. The combination of telewagering and VLTs will work as a more rounded form of entertainment. In the approximately one and a half years of telewagering, we have not experienced a problem gambler.

Northwestern Ontario is a unique geographic area that is dislocated from actual horse racing tracks. It would not be logical to expect a resident of northern Ontario to travel to southern Ontario to participate in live horse racing. The brewpub provides the opportunity and support to offer live teletheatre horse racing to the north. As we are an integral part of the northern environment, serious consideration should be given to encompassing the teletheatres in the northern part of the province in the initial VLT allotment to ensure equitable across-province horse racing venues and gaming opportunities.

In summary, Mr Chairman, I urge you and your committee to recommend to the government quick passage of Bill 75. I would also suggest that your recommendations include a request to move implementation of VLTs for the licensed gaming outlets on to the fast track. The longer-term solution to the continuation of horse racing tracks requires the installation of VLTs.

As a corollary to this, the teletheatre, such as that which is located at the brewpub, is also integral to the tracks' success as we provide the increased volume and revenue necessary for their survival. The teletheatre venue at the brewpub has been provided at no cost to the track and has proven to be successful to them. Implementation of VLTs in this venue will provide the well-rounded impetus necessary for the success of both venues, will stop the outflow of Thunder Bay moneys across the border to US venues and will also provide money that will then be available for other government purposes.

Just as Thunder Bay experienced a very real problem with out-shopping in the distant past until more commercial development was allowed to enter the Thunder Bay market, we presently are experiencing a significant outflow of gaming money or out-gaming to the US market. The introduction of gaming in a controlled environment will stem this tide.

We provide the best alternative, the best opportunity for the government to succeed in its revenue-generating goals and at the same time adapt a proven, controlled environment. Horse racing teletheatres are approved by the federal, provincial and municipal authorities and are regulated by the LLBO. It is our contention that a controlled implementation of a legalized system of VLTs will generate significant revenue for the Ontario government, energize the economy and create jobs and, as has been indicated by various experienced police officials, will help to curtail illegal gambling, divert illegal revenue to better purposes and at the same time free up scarce front-line police resources currently engaged in prosecuting illegal gaming activities to pursue other policing priorities. The positive financial, social interaction and charitable gains from the introduction of legal VLTs are extremely significant.

The growth of jobs and employment in Canada, it is said, is dependent upon the development, expansion and

existence of more small businesses. I am suggesting to you today that VLTs are one of the areas of assistance necessary for continual small business survival and growth.

Thank you for listening today. I trust we have provided some support and information for your consideration.

The Chair: Thank you, Mr Caron. We have two minutes per caucus.

Mr Young: This is my third visit to Thunder Bay and every time I have enjoyed it so much. It really is a wonderful town. I heard something yesterday that really disturbed me about a bus service that goes several times a day to a casino in the United States and is taking a lot of your entertainment business and hospitality business out of town. Can you tell us about that?

Mr Caron: The Grand Portage establishment provides, free of cost, two busloads per day to their establishment for Thunder Bay residents to gamble. The estimated cost of that service to the best of our determination is approximately \$300,000, and that's provided free by the gaming. So that gives you an indication of the magnitude of the money that's coming out of the Thunder Bay community. In addition to that, that's a small part of the cross-border individual traffic that is being monitored going specifically to that venue. A very large exodus of Thunder Bay people go on a daily basis.

Mr Klees: Mr Caron, thank you for your presentation. Over the last couple of days there has been some misleading information, I believe, that has been left with people who have been observing these proceedings by the opposition parties, and that is the sense that these video lottery terminals would end up on every street corner in the province of Ontario. You've indicated your support for what in fact the government policy would be, and that is a very controlled implementation within very restricted areas within the province.

I found interesting your reference to the fact that you are now doing a teletheatre type of entertainment. You felt that is now very much controlled and you would be able to extend the same type of control to the VLTs. Could you just elaborate for me —

The Chair: Thank you, Mr Klees. We must move on.

Mr Klees: We'll talk later.

Mr Michael Gravelle (Port Arthur): As you probably know, I'm a regular patron of the brewpub so I have a sense of the dimensions and certainly of the teletheatre in terms of the horse wagering and everything else. What I'm curious about are a couple of things. One, because I am familiar with the dimensions of the place, I'm curious as to how, if this went forward, you would implement it in terms of there being a need to basically have obviously a separate place in terms of where you would do it and how that would affect the customers, because I do see it as a family dining place.

Mr Essa mentioned it and you mentioned it as well in your brief that there was a sense that the patrons want this to happen. Have you done any kind of formal survey or anything at all that one could describe as a formal sense of what your patrons want and whether indeed they've been asked specifically about video lottery terminals and that kind of access?

Mr Caron: I have not done a formal one; I've done an informal one. As you may or may not be aware — you see me there quite regularly — I have done an informal one. I constantly ask the regular patrons. We had a study done by Lakehead University on our business and their answer was that we have 105% repeat business, so I guess if I ask the people who are there, they're the same people all the time. Externally, I've asked anybody who will listen to me and I have not to this date received one negative response.

We have proven that we can provide a number of different types of entertainment, and the other issue we will be doing to explain how we're going to control it — there will be a ground/sod-breaking next week — is that we will be adding a significant portion on to the brewpub for a controlled environment. We will move the tele-theatre, if we are so awarded the VLTs, into that area, so we'll have a complete controlled environment.

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Mr Gravelle: Certainly one could argue that one thing with telewagering is that in most ways it does not take away from the ability of people to go back and forth, it doesn't change the access, whereas with the introduction of VLTs, it will change the access in a rather dramatic way, which one could argue will change the whole flavour of the restaurant.

Mr Caron: That's why we're adding a significant portion on to the restaurant, so that we will continue to have a proper restaurant environment, and the horse racing will be integrated into that, but the VLTs, if allowed, will be separated into a controlled environment.

Mr Kormos: Look, I understand why your understanding and the horse race industry and every bar and tavern in this province and the hotel-motel industry want slots, because there's a whole lot of money to be made. But I suggest to you, sir, that the placement of slots, 20,000 of them across the province in every place but a casino, because that's what the government is talking about, can take a very serious toll.

John Scarne, an expert on gambling, in his book Scarne's New Complete Guide to Gambling, in his chapter "Slot Machines, the One-Armed Bandits" — and he's a proponent of gambling, a gambling advocate — says:

"It is doubtful that any other form of gambling has the hypnotic fascination of the slot machine. It is difficult even for a person who believes gambling is morally wrong not to drop at least one coin in the slot and pull the handle, if only to watch the wheels spin."

Sir, at the rate of 20,000 machines in this province, we're talking about approximately one machine for every 550 population. That means some 235 machines in the city of Thunder Bay. If only \$1,000 a week is taken in by each machine, and I'm very doubtful that it would be maintained at as low as \$1,000 in view of the addictive quality of these machines — and Gfellner says: "The introduction of VLTs has led to an increase in overall gambling activities and expenditures for these persons," VLT players. "The more machines there are, the more gambling there is." That's the nature of the beast.

Two hundred and thirty-five slots at 1,000 bucks a slot per week, and it's more likely to be \$2,000 or \$3,000,

means \$235,000 minimum that isn't being spent at supermarkets, that isn't being spent in shoe stores, that isn't being spent at small businesses in downtown Thunder Bay, that isn't being spent on household furniture, that isn't being spent on feeding people's kids. I tell you, there is great concern by a large number of people.

I appreciate that the lobby efforts are significant because of the great profit potential here. But just as the tobacco industry in North America has attempted to portray smoking as non-addictive and somehow a leisure activity, the gambling proponents want to somehow declare gambling as mere entertainment. Sorry, it don't work that way.

The Chair: Your time is up, Mr Kormos.

Mr Ron Johnson (Brantford): On a point of order, Mr Chairman: With all due respect, if Mr Kormos wants to continue to give a speech, he can do that in the Legislature. We came up here to listen to the people of Thunder Bay. I know I'm interested in what the delegates have to say. If he has a question, I'd appreciate it if he poses it, but he can certainly save his speeches for the Legislature.

The Chair: If Mr Kormos chooses to make a speech rather than asking questions, I believe he is entitled to do that. That is his choice.

Mr Caron, I'm sorry Mr Kormos did not permit you time to answer his question, if there was one. Your time is up, so we'll have to move to the next person, but I thank you very much for attending today.

Mr Klees: While the next speaker is coming up, Mr Chair, I had asked Mr Caron a question and he didn't have time to respond. I wonder if we could have an undertaking from the clerk to send Mr Caron a copy of the question so we can ask Mr Caron to respond in writing if he would care to so we would have that for the record.

The Chair: That's fine, Mr Klees. That will be done.

NORTHERN TELETHEATRE NETWORK

The Chair: The Northern Teletheatre Network, Mr Ron Miron. Welcome. Good morning.

Mr Ron Miron: My name is Ron Miron. I'm with the Northern Teletheatre Network, which is part of Sudbury Downs and the Ontario Jockey Club.

Let me begin by saying that we support the government's initiative to introduce VLTs into the province of Ontario. Gaming is a socially acceptable form of entertainment in Ontario. Legalized VLTs that support the government, charities, and legal, taxpaying and employment-generating businesses will provide a very real alternative to the grey market service that prevails in the province today. However, as I will detail later, it is critical to the citizens of this province and the racing industry of Ontario that VLTs be introduced in a very cautious and controlled manner and that mass expansion into non-wagering environments could create serious adverse results.

The Northern Teletheatre Network was formed in the fall of 1992 with its objective to pioneer offtrack wagering in Ontario. As Ontario's test market, a number of locations were opened, and currently we operate 13

offtrack wagering locations. All venues provide food and beverage service and are approved for this type of gaming activity through municipal, provincial and federal governments.

The NTN has as its main purpose to revitalize the horse racing industry in the north by expanding the market base of the only northern harness racing track, Sudbury Downs. This network has brought world-class harness and thoroughbred racing to remote communities throughout the north while maintaining the highest standards of regulated controls and service required by the CPMA and the ORC.

Teletheatres are legal, by regulations under the jurisdiction of the Criminal Code of Canada, only as extensions of existing racetrack facilities. All the NTN locations have an excellent track record of customer service and have demonstrated their ability to provide wagering service to a diverse clientele while ensuring compliance with the federal and provincial regulatory bodies.

The offtrack wagering format as operated by the NTN has exemplified that wagering can be brought to the northern communities with the utmost level of control while limiting the opportunities for abuse through the operation of restricted venues.

The horse racing industry had been the only legalized form of gaming available in Canada for many years. The economic benefits which this type of gaming has brought to our province are numerous. The facilities, employment and economic impact are all factors which have contributed to making this industry a very important business in Ontario.

There are currently 18 tracks offering live racing in Ontario. The facilities required for the presentation of live horse racing are geographically spaced in the province as to provide services to the majority of population bases which are deemed sufficient to support the high overheads created by this type of activity. Racetrack establishments are constructed to accommodate large numbers of people. Therefore, they are equipped with adequate floor space and parking for tourists, who primarily visit Ontario via automobile.

Teletheatre locations are selected to provide remote service to the public and are, by federal government regulations, an extension of operating racetracks. All the locations must meet the strict requirements of the CPMA and ORC prior to their approval in order to maintain the highest level of integrity, security and customer service possible for Ontario race fans.

The horse racing industry is one of the major employment and revenue sources for the Ontario government. An Ontario government study, the Dunning report, revealed that there were 47,000 jobs in the Ontario racing and breeding industry, which was further updated to 54,000. As of 1994, the industry generated \$2.2 billion in economic activity for Ontario annually. Included in this is \$1.17 billion paid to suppliers plus capital expenditures of \$240 million annually. The government netted over \$50 million in parimutuel taxes in 1990, plus \$2.2 million in sales tax at the racetracks.

The employment created by the horse racing industry is quite extensive. In Ontario, this activity generates in the range of 54,000 jobs, which compares favourably to

20,000 jobs in the Canadian brewing industry, 55,000 in logging and forestry and 53,000 in mining and quarrying. The type of employment created by this industry involves, for the most part, the training, caring for and breeding of horses. This highly specialized, hands-on type of work requires specific skills which are not easily transferable in today's economy.

Video lottery terminals could be a serious threat to the viability of the province's horse racing industry. Montana and Manitoba case studies have demonstrated that the improper implementation and distribution of these machines have resulted in severe adverse effects for the horse racing industry.

In Montana, the legalization of video lottery terminals occurred in 1987. Montana had 10 racetracks in operation at the time of the introduction. In 1991, four of the tracks had closed down and two were in fragile health. The parimutuel handle had dropped by 43%. The horse racing industry in Montana, in its present form, has been devastated by the impact of improper implementation of VLTs.

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Assiniboia Downs in Manitoba was Manitoba's number one tourist attraction until the Crystal Casino in Winnipeg caused declines in attendance and wagering. The track was forced to cut its live horse racing schedule to half the year in 1991. In 1993, the losses incurred by the track forced it into receivership.

The track had developed an offtrack wagering network to try and offset the devastating effects of VLTs and casinos. Within one year of the introduction of VLTs the wagering at the teletheatres had dropped dramatically. The four busiest teletheatres, which had averaged \$35,000 a day, fell to \$8,000 a day while teletheatres in Brandon plummeted from around \$10,000 daily to \$1,300 daily. The loss of jobs from the reduction of business at the Manitoba racetrack in 1993 was tabulated at over 2,000.

It has been estimated, based on the case studies of other provinces and states, that improper distribution and implementation of VLTs will have an immediate impact of about a 25% drop in wagering, a 30% drop in horse prices and the closure of the more fragile tracks. By the third or fourth year, Ontario could expect to see 50% of its tracks out of business. Furthermore, there could be serious consequences if VLTs are allowed in such an invasive manner. The uncontrolled mass dissemination of VLTs in other jurisdictions has led to grave societal problems associated with compulsive gambling.

We believe that the positive results that would be produced by the introduction of VLTs into the province of Ontario can be realized without adversely affecting our industry and without creating the potential negative social consequences that have occurred elsewhere.

The NTN supports the introduction of VLTs into the province. In view of today's demanding society and the reality of this province's financial requirements, the significant revenue to accrue to the provincial treasury from the operation of VLTs cannot be ignored. Furthermore, the elimination of the illegal, grey market activity in favour of developing legitimate tax-paying and employment-generating business activity will benefit all the citizens of Ontario. Finally, gaming is an accepted form

of entertainment in this province as evidenced by the current proliferation of legitimate gaming activities such as lotteries.

There's no doubt that VLTs, like any other form of entertainment, must be controlled to avoid serious adverse social consequences. As has been demonstrated in other jurisdictions, a too-invasive distribution of VLTs into the province may lead to serious problems of compulsive gambling and the negative activities associated with it.

The deployment of VLTs at racetracks and teletheatres would avoid this potential pitfall. Racetracks and teletheatres would provide only a limited number of venues for VLTs that are destination-oriented. People would make a conscious decision to visit the track and teletheatre to play the VLTs. They would make this decision consciously. There would be no impulsive gambling created simply because of the convenience of the machines.

We believe that to maintain the survival of the horse racing industry VLTs should, as originally allocated in the recent provincial budget, be distributed to the racetracks in the province. The concern that the government may have with reference to providing equal opportunity and access to communities throughout northern Ontario would be eliminated by the offtrack wagering network already established throughout the north. Sudbury Downs and its offtrack wagering locations have numerous unique features which factor into validating this position:

Racetracks and offtrack wagering locations are both legislated by the Canadian Parimutuel Agency of the federal government and the Ontario Racing Commission.

Municipalities currently hosting offtrack wagering locations have approved each site specifically through council consultation prior to our securing provincial and federal approvals.

Racetracks and teletheatres both offer a high and effective level of control of the wagering in each community by isolating the product in restricted environments.

The allocation of video lottery terminals to racetrack facilities would provide excellent support for the racing industry in its local surroundings, but this type of limited distribution may not provide effective coverage to locations outside the track community. This is what makes northern Ontario different from the rest of the province. There's only one racetrack in the north and geographic distances prohibit access to that track to the vast majority of northerners. Communities such as Thunder Bay, Kenora, North Bay, Parry Sound and numerous others would not benefit from the opportunity to play VLTs and the government would not benefit from effective provincial coverage. The distribution of the provincially allocated VLTs into the Northern Teletheatre Network in addition to the current northern racetrack would ensure that all communities benefit from this type of entertainment while maintaining gaming activities within limited and secure environments.

Customer demand could determine the volume of machines required per site as each teletheatre would be operated as an entertainment destination set up to service the needs of the specific communities. The novelty of

playing the VLTs would remain as a highlight of each visit to a location offering a complete complement of horse racing and VLT action.

The northern teletheatres have been limited to specific communities in the province due to the high capital and variable costs involved in setting up and operating locations. The allocation of VLTs to offtrack wagering locations will provide the NTN with the revenues required to expand significantly to numerous locations throughout northern and northwestern Ontario. The fact that patrons wishing to play the VLTs would be required to attend the teletheatres would ensure that they are exposed to the horse racing and that gambling remain a form of entertainment in the province rather than imposed habit through massive distribution and exposure.

The Northern Teletheatre Network currently employs a complete staff in each community serviced by an offtrack wagering location specifically dedicated to the service of the wagering patrons. Sensitive to their needs, our employees are trained to respond to the customers' requirements without any distractions, such as bar service or foodservice. By maintaining and by simply expanding our current staff we could conveniently integrate these responsibilities of VLT customer service into our current duties, ensuring the utmost level of security and control of the patrons.

The racing industry would in turn benefit by having VLTs contribute positively by maintaining the currently estimated 54,000 jobs and tourism generated by the horse racing industry in Ontario in addition to generating additional government revenues.

Recognizing the impact VLTs can have on the industry, the NTN has taken the position that the implementation of video lottery terminals into racetracks and the offtrack wagering network would be beneficial to the future of the business. Our biggest concern relates not to the installation of VLTs at racetracks, but rather to their deployment on a massive scale at other sites. The horse racing industry could suffer irreparable harm if VLTs are introduced at too many venues, as documented in other jurisdictions. We suggest that it would be appropriate to review the potential expansion of VLTs to sites other than racetracks and their teletheatres after sufficient experience has been gained at the racetrack venues.

The mass distribution of VLTs to locations throughout the province would threaten the unique aspect of the horse racing business. As the most regulated form of gaming in Ontario, horse racing is required to conform to the highest levels of control and regulations to preserve the integrity of the sport and prevent abuse. The racing industry has demonstrated its ability to conform with the regulations required by the municipal, provincial and federal governing bodies. This has always been done to ensure that any wagering that is permitted by law in Ontario remain under strict controls to prevent abuse and limit wagering activity to restricted venues.

The NTN during the last three years has invested significant time and funds to developing effective offtrack wagering networks dedicated to bringing their regulated form of gaming to remote communities throughout northern and northwestern Ontario. Given an appropriate allocation of VLTs, the NTN could provide service to all

communities currently serviced by offtrack wagering with the shortest of delays. The additional revenue generated by VLTs would contribute positively to the network and a large-scale expansion could be implemented to serve any other communities outlined as requiring service by the government. This would ensure that all the criteria, which are critical to all concerned regarding gaming activity, be effectively applied to maintain control and provide complete coverage throughout the province. This we believe to be critical for the NTN as the distances between the racetrack, Sudbury Downs, and the numerous markets in its approved area of operation for offtrack wagering are quite significant, which would leave northern and northwestern Ontario communities at a distinct disadvantage over larger southern communities.

Offtrack wagering, like racetracks, will offer the VLT wagering public an area to participate in this type of entertainment, a very controlled area which will prevent abuse and ensure that gambling remain a form of entertainment worthy of such an environment. Racetracks and their teletheatres would also give the government access to the financial strength required to ensure that locations offering wagering conform to specific standards of operations. Such issues as hours of operation, equipment ownership, days of operation, facility requirements, security, control, reporting and marketing would all be factors that could be standardized throughout the locations featuring wagering as the main form of entertainment.

Failure to limit distribution of VLTs in the province, as documented in other jurisdictions, will certainly reduce offtrack wagering activity, resulting in an immediate loss of jobs, reduction in tourism and jeopardizing the very important horse racing industry in Ontario. The lack of control resulting from the mass distribution of VLTs could lead to serious adverse social consequences and will reduce the effectiveness of VLTs to attract tourism by reducing the activity to a common habit rather than putting it on a pedestal and making it an attraction to visitors to our province.

Mr Bruce Crozier (Essex South): Good morning, Mr Miron. If the government had not announced earlier this spring that it was going to introduce VLTs to harness racing tracks, permanent casinos, charitable casinos and ultimately to licensed establishments, would you be here today or would you be lobbying the government to introduce VLTs at racetracks?

Mr Miron: We would be lobbying to introduce VLTs at racetracks.

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Mr Crozier: Prior to this announcement you had approached the government or those in the horse racing industry had approached the government to have VLTs at racetracks?

Mr Miron: Our approach had been on the local level through the Sudbury Regional Development Corp and we had already submitted a report very similar to the one that I have presented today over two years ago.

Mr Crozier: What did you estimate it would do to your handle on horse betting, on race betting, once VLTs were introduced?

Mr Miron: What it's done to offtrack wagering, much like it's done in the United States, offtrack wagering is the only reason that we are still in operation. We expected VLTs to be a Big Brother to that because of course the revenues go towards the racetrack.

Mr Crozier: What would it do at Sudbury Downs?

The Chair: Excuse me, Mr Crozier, we must move on.

Mr Kormos: Thank you kindly. I know where the horse race industry is. Mind you, you recall that they opposed casinos.

Mr Miron: Absolutely.

Mr Kormos: They thought that was bad. Mind you, it was self-interest, because they knew there was going to be what they call cannibalization of up to 30%, 40% we were told yesterday by a representative of the Ontario Jockey Club. Of course, some people call these VLTs. In as much as a video game is not a pinball machine because a pinball machine is mechanical and a video game reflects the electronics available to us, a VLT is a slot machine, a one-armed bandit; it's as simple as that. The concept hasn't changed, the principle hasn't changed, other than the spin doctoring. Somebody got paid a whole lot of money to call these video lottery terminals rather than slots, because somehow it sounds a little better.

In the States the payouts on slots are 70% to 95%. Once again I'm referring to Scarne for authority for this, but competition generally determines the percentage payout on most slots.

I read that over in —

The Chair: Thank you, Mr Kormos. We must move on.

Mr Kormos: The government needs the cash.

Mr Flaherty: He's on our time now.

The Chair: Mr Flaherty, you're using your time right now.

Mr Flaherty: Good morning. With respect to the racetrack industry, I gather that the view of the industry is that the introduction of video lotteries at the tracks will be a benefit to the industry. In fact, we heard some evidence yesterday from the Ontario Harness Horse Association that the racetrack of today has to be an entertainment centre in order to compete in the entertainment market. I take it you agree with that.

Mr Miron: Absolutely.

Mr Flaherty: We have the introduction of video lotteries at racetracks and then charitable gaming halls, which will be something separate from racetracks, at permanent sites, and that's something that has to be looked at in subsequent discussions about implementation.

The unusual situation here, I gather, is that there's not of course a racetrack in the north other than Sudbury Downs. Do you see the increase in purses at Sudbury Downs that would probably follow the video lotteries as being good for the offtrack betting business here that you operate at your locations?

Mr Miron: We're very concerned that offtrack wagering will suffer significantly due to the fact that there will be no racetrack service in Thunder Bay offering VLTs, and that's why our presentation is based on getting video lottery terminals.

Mr Flaherty: And if I understood you correctly —

The Chair: Thank you, Mr Flaherty. Our time has elapsed. I thank you very much for attending here today, sir.

CASEY'S GRILLHOUSE

The Chair: If we could proceed, Casey's Grillhouse is scheduled next. Please approach and take a seat. Welcome. Could you identify yourself for the purpose of Hansard.

Mr Doug Fraser: Good morning, Mr Chairman. My name is Doug Fraser. I'm the general manager of Casey's Grillhouse here in Thunder Bay. I'd just like to thank you and your committee members for the opportunity to appear before you today. I believe you have copies of the enforcement experiences in other provinces, a Brandon University study and a VLT fact sheet.

I'd like to begin today by stating up front that I'm very supportive of Bill 75 as it relates to video lottery terminals and urge the government to implement them into the hospitality sector as soon as possible. We as an industry are in a serious economic situation, and I can tell you from a personal perspective the urgency of the situation.

Our industry is in serious trouble. Sales are down approximately 20% across the board, we have lost about 100,000 jobs and there have been about 1,400 bankruptcies since 1992. I can tell you personally that the business I'm involved in right now is in that position, where it is down approximately 20%. We have three rooms, approximately 100-plus employees and we're trying to turn the business around right now. One of the rooms does have, three days a month, a charity casino operating in it. Just from the turnout for that on the three-day-a-month basis, I can definitely say it would help the revenues of the business, bring them back to where they should be.

The Minister of Finance, in his budget on May 8, said the government was going to allow VLTs to help our industry. Specifically he said, "We believe that VLTs, if implemented within tight regulatory controls and in limited-access environments, can meet legitimate entertainment demand and provide a significant stimulus to the hospitality industry."

The ministry also referred to 15,000 illegal machines in Ontario. It is important that the implementation stage for our industry not be delayed and that the timing be as soon as possible following the racetrack and charitable casino schedule.

From the government perspective, delaying implementation to our industry will mean the government will not be able to start receiving over \$500 million annually from machines allocated to our sector. Conversely it means that illegal, untaxed revenues from the grey machines continue to remain in the underground economy.

From the businessperson's perspective, like me, it means that a delay could very well result in having an initiative that the government intended to help the hospitality industry hurt it. The reason is that during the first stage of implementation to the racetracks and charity casinos it will create business dislocation. Customers will gravitate to where they can legally play VLTs. We cannot

afford to lose any more business, even for a short time. As well, who knows if the customer will ever come back, or how often.

Businesses close to the new casinos such as in Windsor, Orillia, Sault Ste Marie and now Niagara Falls, or the new charitable casinos, also need VLTs. The casino in Windsor, for example, has had a devastating negative impact on the local hospitality industry. Further, VLTs will not negatively impact the casinos. Dr Marfels from Dalhousie University in Nova Scotia has proven this in a study he has conducted on that issue in that province.

Delay will also mean, as I said earlier, that the government will be delaying moving on the offensive against illegal machines. It is very difficult to try to operate legally, especially in these tough economic times, when competitors are attracting your customer with illegal machines. We need this unfair competition stopped now.

VLTs work as an attendance generator because they are an acceptable form of entertainment. It's what the public wants. They play them for entertainment, not to gamble. They are part of an evening out.

Independent research confirms, as I believe you are aware — I refer to the work conducted by Dr Barbara Gfeller from the Brandon University. She found that the average player plays the VLT for 30 minutes once or twice a week and spends an average of \$10. She also said that most people who play VLTs do so on a moderate-budget basis and perceive VLTs to be a modest form of risk-taking in an entertainment-oriented social environment.

Finally, the overwhelming majority, 85% of VLT players, reported that the most important reason they went to the bar or lounge was to relax, be with friends, socialize and meet people. It is an affordable budgeted activity that is viewed as recreation or entertainment.

Ontario has already a full section of legal and illegal gambling opportunities. I already referenced some of the illegal opportunities this measure will help to control, but one does not have to go further than one's own corner store or bingo hall to find gambling opportunity. However, just as in the consumption of alcohol, the vast majority of gambling in moderate experiences has no significant gambling problems.

A new brand of alcohol does not increase the overall level of alcoholism. With all the existing forms of gaming today, lotteries, sport pools, bingos, horse racing, casinos, Nevada tickets, the introduction of the new brand of gaming, video gaming, will not significantly increase the potential for compulsive or problem gaming in Ontario. Research shows that less than 2% of the population are potentially compulsive gamblers, and another 3% to 5% may experience some problems.

The executive director of the Canadian Foundation on Compulsive Gambling has said, "Prohibition is not the answer. Education and treatment are." Dr Durand Jacobs, vice-president of the US National Council on Problem Gambling, said in an interview on Canadian television: "The majority of the population has no problem with gambling. For most folks, gambling is just fun and games, but for a small minority who have a problem it can be devastating, and we can develop programs to help them."

I would also like to take this opportunity to point out that the public supports the introduction of VLTs into our establishments. Our customers tell us continually that the traffic generated by illegal machines in competing locations proves this. Independent surveys conducted by En-vironics Research and Angus Reid confirm this as well.

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Mr Chairman, on behalf of myself, the employees I still have and those I would love to be able to re-employ, I urge your and your committee to recommend to the government to pass Bill 75 as quickly as possible. I would also suggest that your recommendation include a request to move implementation of the VLTs to our industry on to the fast track. Our situation is desperate. We have all been hoping and praying for the government to take this progressive step and we are grateful for this. We need the stimulus for this new form of entertainment. We don't have to speculate as to the outcome. Positive results are already there, as amply demonstrated in Manitoba.

Mr Kormos: In Alberta, with 5,700 slots, the government take was \$365 million. Twenty million slots, as proposed by this government — and I'm confident they'll have them — constitute a take of over \$1 billion by the government. As one commentator from Alberta put it, "If indeed a government, any government, were collecting the same amount of money from the seniors or other people through a tax, all hell would break loose." Would you agree with me in that regard?

Mr Fraser: No, I believe that would probably be a personal opinion of the commentator.

Mr Kormos: The government's going to draw over \$1 billion in the province of Ontario in revenues, based on the Alberta experience. It's taking that money from the pockets from Ontarians. It's not imposing a direct tax, but it's putting slots out there.

You make reference to the concern about illegal slots, right? Because that's one of the arguments that the government spin doctors told them to use. But, you see, Dr Howard Schaffer of Harvard Medical School, an expert on gambling — a described expert, and I'm sure there are people who will refute him — disputes the argument that legalization of slots would attract those who now gamble illegally. He suggests that not only would there be a substantial increase in gambling, which is what Gfellner, among others, suggests, but many would probably turn to illegal gambling eventually because the payoffs are always higher.

The phenomenon of licensed establishments didn't eliminate after-hours clubs. The phenomenon of licensed establishments didn't eliminate bootleggers. The problem with an illegal slot is that the owner of the slot gets to keep all the money. That owner is highly motivated to keep that slot running. The fact that there are legal slots somewhere else isn't going to change the fact that an illegal operator wants to keep an illegal slot so he can collect all the revenues. The Ontario anti-rackets squad from the OPP have told us that it's policing that's needed. They haven't got the person-power, the police power, to target illegal slots.

We hear from one report that there are some 40 illegal slots here in the Thunder Bay area. We've heard that

there were complaints made about them. One can only assume that the police force in Thunder Bay is as eager to eliminate this illegal activity as any and simply hasn't got the person-power. How do you contradict Dr Schaffer from Harvard Medical School and his refutation of the proposition that 20,000 slots is going to eliminate the illegals?

Mr Fraser: I don't have a copy of that report, but if you can give me a copy of that I'll get back to you and give you the information I can.

Mr Flaherty: Good morning. I gather that you've read the material indicating that most Canadians view playing VLTs as an acceptable form of fun or entertainment.

Mr Fraser: Yes.

Mr Flaherty: We'll leave it to Mr Kormos and those who share his view to patronize Canadians who enjoy that type of entertainment and to look down their noses and be modern-day prohibitionists and tell them it's not good for them, in his view, and that therefore the government should prohibit the introduction of these machines.

Listening to your presentation, I take it that the distinction you're drawing is that the government's plan — to phase in video lotteries to racetracks and charity gaming halls first and then to assess the situation and, having done that assessment, move forward to the hospitality/licensed industry — is perhaps too slow.

Mr Fraser: I'd like to see it move a little bit quicker for allocation to the hospitality industry.

Mr Flaherty: All right. I'm going to stop there because I know one of my colleagues wants to talk.

Mr Klees: To this point, there has been unanimous support for the implementation of VLTs by all of the presentations today. The previous two presentations, however, were putting forward the proposal that implementation should be considered on a different level for northern Ontario than perhaps the rest of the province. Specific reference was made to the fact that there are fewer locations available in northern Ontario for the initial rollout. In your personal view, your opinion, should we be looking at northern Ontario as a unique area of the province for the purposes of implementing the VLTs?

Mr Fraser: Yes, for the fact is that there is that casino south of the border. To me, it would keep a lot of the revenue in Canada as opposed to sending it south. I'd definitely like to keep the money in Canada.

Mr Klees: For the purpose of economic development locally here in northern Ontario, you feel that there is definitely an advantage to us moving more quickly in terms of implementation here than in the rest of the province?

Mr Fraser: Yes.

Mr Ramsay: Doug, thanks very much for coming. This is interesting and why we travel to find out what the situation is in different localities. We've heard various reports today of how many grey market machines there might be in this area. Do you have a sense of how many you think there might be in this area?

Mr Fraser: I really couldn't tell you offhand.

Mr Ramsay: Do you think they have an impact on your business?

Mr Fraser: It definitely would be taking away from the business if there were those machines out there.

Mr Ramsay: Oh, you're not even sure they are there?

Mr Fraser: They are there, yes; sorry.

Mr Ramsay: Have you made any formal complaints to the police?

Mr Fraser: Not at all, no.

Mr Ramsay: I would just say that I would imagine if the police got enough complaints they would probably start to act on this. It's probably a good idea.

You mentioned you have one of those sort of roving charity casinos three days a week or a month?

Mr Fraser: Three days a month.

Mr Ramsay: Do you realize that in this bill you're going to lose that?

Mr Fraser: Yes, but at the same time — the reason for trying to rush the implementation into the hospitality industry — I believe we could hire some more people and get that revenue back very quickly.

Mr Ramsay: You concede that probably the permanent establishment of a charity casino in the short term, until you get some VLTs, would have a negative impact?

Mr Fraser: Just a short-term loss, but in the long term I can see it being a very beneficial thing to our establishment.

Mr Ramsay: So that when you get the VLTs in you figure you can counteract the effect of that?

Mr Fraser: Oh, by far.

Mr Gravelle: Good morning. How many VLTs do you think your establishment would need to make it viable? Because I see a problem developing here in the sense that there are a number of establishments that want them. There are only so many that would be allocated based on the formula right now, somewhere in the area of 230. But in terms of your establishment — and certainly previous ones have made it clear they would be setting separate sections aside, blah, blah, blah — it seems to me you'd need a certain number to make it a profitable or useful thing.

Mr Fraser: I'm sure any business, depending on its size, will take as many as it can get. In the operation we have, we have three separate rooms: We have Casey's, which is a franchise restaurant; Ringside, which is more of a sports bar; and a banquet hall upstairs.

Mr Gravelle: I'm sorry to rush you, to interrupt you, but if you only had five of them, you were allotted five, would that be useful to you? Would you accept that as being a number that you would —

Mr Fraser: I'm sure any number would be useful to the business; it would be beneficial.

Mr Gravelle: Because I think there is a problem developing in the sense of the fact that there are a number of establishments that say they want it. There are only so many that can do it. There's been a point made earlier that only certain places should have them. As the day wears on, we're going to be having more and more people. I'm not sure how that would be allocated in the first place.

The Vice-Chair (Mr Ron Johnson): Mr Fraser, on behalf of the committee, thank you for your presentation.

Is Lil Belanger in, please? Lil Belanger doesn't appear to be here as of right now, so we'll move on to the Northern Lake Superior Aboriginal Association and Harry Daniels.

Mr Klees: Could I just get a clarification? A statement was made previously that with the introduction of this bill the charity casinos would no longer exist. That's not my understanding. Could we get clarification from Mr Flaherty on that, or from staff?

The Vice-Chair: Very briefly, Mr Flaherty, please.

Mr Flaherty: Under Bill 75 roving charities will still exist, but they'll only be one day, as part of an event such as a dance or a community event, something like that, rather than the three-day events that are happening now, which would be scaled back. There would be continued existence of the roving charities on a one-day basis.

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ADDICTION RESEARCH FOUNDATION

The Vice-Chair: In the absence of Harry Daniels as well, we'll now move to Lyle Nicol, the Addiction Research Foundation of Thunder Bay. Welcome.

Mr Lyle Nicol: Good morning, Mr Chair and members of the panel. My name is Lyle Nicol. I am a consultant in community programs with the Addiction Research Foundation, Thunder Bay. I would like to thank you for allowing me to speak before this committee this morning. I am a bit ahead of schedule here, so I just have to collect my thoughts for a moment, but I guess that's the nature of the game. I do have Dr Robin Room's comments and I was inclined to replicate what he said, but I think I'll just forge on on my own here.

The Addiction Research Foundation is an agency of the province of Ontario, and we are dedicated to the reduction of harm caused by alcohol, tobacco and other drugs in our communities in Ontario. We do this through research, treatment, education and appropriate programs. Also, in the last couple of years we have been involved with gambling issues. We have a gambling project. I am in contact with these people on a fairly regular basis. Because of the nature of my work and being a community consultant, I deal with any number of agencies, community groups, different people who are concerned about these problems. I am concerned about the overall impact of problem gambling, gaming and alcohol consumption.

I think this bill is much more wide-ranging than just VLTs. We have to look at the whole bill. The focus seems to be on VLTs, so I think most of my presentation will be in that area. These comments are coming directly from someone who is a front-line worker; I see what is happening.

I was once a consultant in Kenora. However, since moving to Thunder Bay two years ago, I have really noticed an increase in the number of calls around gambling issues, including problems around VLTs. The source of these calls has been from all areas. A lot of these people have been involved with casinos just over the border, the much-mentioned Grand Portage casino plus other jurisdictions. I get calls from people who are involved with gambling issues who are currently in crisis at any level, I get calls from other agencies who have people who are in for counselling but are presenting gambling problems, and lately I've been getting calls

from various organizations in the city, various unions, that are concerned about the gaming activities of some of their employees.

There has been evidence presented this morning that it doesn't represent a wide range of the population. I would have to concur with that: For the majority of people, gambling and gaming is not a problem. But in any line of continuum when we're looking at addictions a wide range of people will not be affected, can in fact go out, spend very little, have a good evening, come home and not suffer any ill consequences. As we move further along in the continuum, there are those who spend more than they should and start to develop problems, but if they are taught and educated, then they can be pulled back and modify their gambling or drinking or drugging problems. However, as with all addictions, at the far end of the continuum there are those who are pathological, compulsive, chronic. That's where we get alcoholism, drug addiction and chronic compulsive gambling.

Depending on what screening program we use or what screening device we use, up to 1% — some people say a bit higher, but normally 1% — of the adult population will develop chronic, compulsive problems.

VLTs are considered by some to be the most addictive form of gambling. In several other jurisdictions and through some of my reading, I have learned that in areas where VLTs are available, GA groups, Gamblers Anonymous groups, have increased substantially. In Manitoba, for instance, 85% of clients being treated for compulsive gambling report problems with VLTs, while in Saskatchewan and Alberta the numbers are about 75% and 65% respectively. The city of Winnipeg reports that the number of GA meetings has doubled since VLTs were introduced to that province in 1993.

I probably don't have to go through this, but I'll just mention that some of the most compelling reasons for VLTs are: obviously, winning money; the lights, the sounds, the bright colours, the attraction; it's an avenue of escape from reality; the excitement; the promise of instant gratification; they're current, modern, and for some they appear to be a benign relative of personal computers — they're electronic devices; they appear to be a game of skill and not luck.

However, as with other games of chance, there are a number of drawbacks. VLTs seem to be especially fraught with these issues. Some of the current literature suggests: There is an illusion of control; VLTs appear to be especially appealing to people who want to escape from life's problems; for certain high-risk groups they appear to be a quick fix to persistent money problems; and the compelling nature of the machine often makes it difficult for people to control their frequency of play and the amount they spend.

From my own experience and from people that have called my office whom I've talked to personally, there is that feeling of isolation: It's the person and the machine. There is no outside interaction with other people in the gaming industries. People tend to cocoon around the machine. Other human contact appears to be minimal or non-existent.

Verbal contacts with some of my colleagues in the field suggest that VLT players comprise the largest percentage of problem gamblers in treatment.

Also, if VLTs are in licensed establishments, there is the risk that there will be an increase in problems associated with alcohol and VLTs. I think too that we have to look at adolescents. Certainly, if they're in licensed premises, they will not be allowed to play. However, adolescents are especially vulnerable to addictive behaviour. Once again, as I referred to earlier on, because they appear to be sort of like your Sega Genesis, it's only a step into perhaps becoming addicted.

We're not so naïve as to not realize that in an area of reduced funding taxes and moneys raised from alcohol sales and gaming establishments are one source of revenue. However, because gambling is an issue and because it is recognized by many as an addiction, the Addiction Research Foundation is involved.

As I mentioned earlier, there are many similar lines of progression. When I talk to people who are right there right now having problems — and they are devastating; they're just as devastating as problems experienced by people who are drinking or who are having drug problems. We get the same line of lying, stealing, cheating, conniving, back stabbing, selling off of property, all of the negative things we associate with alcoholism and drug addiction.

These people plead with me, "We need help." They call us because they see our name in the telephone book; we're right near the start of the book. It is not our mandate to keep a caseload of clients that we see on a regular basis, but because people are calling for help, I deal with them and then refer them on. I would have to say quite honestly that the calls I have been getting around gambling issues in the last several months have outnumbered people who are calling outright for help with alcohol and drug issues on a regular basis. I can't give you figures, but I often get calls; it's almost daily now. It is there, and as a front-line worker I have seen it.

If this bill is to progress, it's critical that steps are taken to ensure help will be available for those who are certain to experience difficulties. It's inevitable that as gambling opportunities proliferate the need for treatment will become more acute. If I just make reference to Kevin Costner in *Field of Dreams*, if you build it, they will come. People will come and they will spend money.

From my readings and from people I have talked to, both those who are addicted and people who have been involved with VLTs along the way, they are seen as a seductive form of gambling and can be very addictive. They tend to isolate people and promise instant gratification. The reality is that more people lose than win; that's the premise of gambling. If the house was to lose all the time, there would be no point.

As I mentioned earlier, VLT players represent the largest percentage of people who are actively seeking help for gambling addictions.

While the thrust of this presenter so far has focused in on VLTs, Bill 75 should be looked at in a broader way, and I don't think it should allow the controls that look after alcohol and gaming issues to erode. By using honest, effective legislation, revenue from these two sources probably will be there, but hopefully some of the negative consequences of these two activities will be minimized.

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We have to bring this to the attention of the panel because we are a public health agency. We have to bring it up. It's incumbent upon us, the Addiction Research Foundation, to mention this matter. I think we would be derelict in our duty if we did not talk about the problems with gambling. We talk about the wide range of people who are not affected; however, those people who are are a very real component, and we cannot neglect those people; they will be there. It is our responsibility to do what we can as an organization, as a foundation directed towards this problem, to reduce the harm caused that would be covered by some of the issues in Bill 75. Thank you.

Mr Flaherty: Good morning. I'll speak quickly, because my colleagues have questions as well. We've all looked at these studies — there are many of them — and I think we can all agree, and I'm sure you will too, that a certain small percentage of the population, 1% to 2% to 2.5%, when gambling is available in a society, will develop addiction-type problems. Of course we have gambling available in Ontario society and we have had it for some time. One issue that concerns me, though, is that we have video lottery machines in Ontario today that are not regulated, and we've heard evidence here that minors are using them. I take it that you would consider that to be unfortunate and inadvisable?

Mr Nicol: Yes.

Mr Flaherty: All right. One of the things this legislation does which perhaps hasn't been mentioned much at these hearings is with respect to putting the Alcohol and Gaming Commission together into one Alcohol and Gaming Commission, one regulatory authority. Licensed premises which had video lottery machines would be subject to that authority and would have their liquor licence at peril were they not to obey the legislation and the substantial fines in the legislation. I take it you think that's a step forward in terms of control.

Mr Nicol: Yes. I think all avenues of control are good.

Mr Flaherty: I appreciate that. Thank you.

Mr Tim Hudak (Niagara South): Thank you for your presentation. Earlier today we heard that up to \$40 million a year leaves the Thunder Bay area into neighbouring Minnesota. Does the Grand Portage reserve or any other casino bring any money back here to help with addiction research and treatment and that sort of thing?

Mr Nicol: I have been approached by Grand Portage to see what they could do to address some of the problem gamblers in that —

Mr Hudak: And you're aware that this government is going to go even further than that and set aside 2% of the revenues generated to help out in addiction research and treatment?

Mr Nicol: Yes, I am aware of that and I hope it does happen.

Mr Hudak: I'm sure we will keep to that.

The other point I was going to make from the addiction research study itself — the reading from Dr Jacobs — is that it seems to me, from the research I've done, that pathological gamblers tend to choose a variety of games. They could be addicted to races, to VLTs possibly, to break-open tickets; a lot of them play the

lotteries. Certainly this 2% will be used to treat not only people who play VLTs but people who play all kinds of games, to treat a wide array of different kinds of addictions.

Mr Nicol: I'd like to comment on that. As I said, a lot of the focus has been on VLTs, but the calls I have been receiving come from a wide range of problems and I would certainly hope that the money set aside would address all issues because they are very real. Sometimes I sense there's a dismissive sort of attitude, "Well, it's just 1% of the population," but that is a very substantial number when you look. If you look at 1% of the population in Thunder Bay, that's quite a few people.

Mr Ramsay: Lyle, thank you very much for your presentation. Could you give, for our understanding here, for us who don't deal with the people you deal with — you said you're dealing with clients who are currently in crisis. In human terms, what is actually happening to people you deal with who are in crisis? What's happening to them and their lives and their families?

Mr Nicol: Family systems are breaking down, bank accounts are disappearing, properties are being sold. As I said, a lot of the same issues that face people who are facing alcohol or drug issues happen to people with gambling problems. The range of problems is very parallel to alcoholism and drug addiction. Just as anecdotal evidence, I had a woman call me a few weeks ago. She had received two calls from Visa, on her husband's card or on her card — I'm sorry, I can't remember which — but two cash advances, \$500 and \$600 in succession. They were calling her to wonder what was going on. This money was used for gambling issues.

Mr Ramsay: In your mind, why would a government purposely do this to its citizens? If we know that we're adding another way of gambling for people that's going to increase that activity, why would we do this on purpose to our citizens?

Mr Nicol: I don't know that the government is doing it on purpose to harm the citizens. Across North America there has been a growth in gambling problems, and if the government is going to go ahead with this bill — and I can't sense that anything can possibly stop it — it's critical to look at doing what we can to minimize problems for people.

Mr Ramsay: Would you support this bill?

Mr Nicol: I can't say that I would support it in principle, but if it is going ahead, I would hope they manage it in a way that all promises are lived up to.

Mr Kormos: Research is research. Obviously the gambling industry has commissioned research and relies on that. At the same time, the UK had developed some very strong research, especially as it relates to slots and adolescents. Interestingly, I'm reading from the Journal of Gambling Studies, a paper prepared by, among others, Dr Schaffer, whom I referred to earlier, of Harvard Medical School, and it indicates that between 1975 and 1985, the national per capita sale of lottery products alone increased in the United States from \$20 to \$97. That's a five-times increase over the course of one decade, and of course that doesn't go beyond 1985.

Another article by the same Dr Schaffer in the Journal of Gambling Studies indicates that the rates of problem-

atic and pathological gambling among college students was four to eight times higher than the rates reported for adults. He does go on to say that research isn't available to indicate whether this is merely transitional, as it often is with drug use and drinking, or whether it's significant in terms of indicating pre-addictive, pre-pathological behaviour.

Those are, in some respects, very shocking statistics. Of course the figure of 2% of the nation being problematic or pathological gamblers is tossed about, but that's pre-20,000 VLT slots here in the province of Ontario. There seems to be universal acceptance — Gfellner says so — that increased accessibility indicates increased use, and that applies to liquor: Increased accessibility implies increased use.

Mr Nicol: And I do believe I did say that earlier on, that if you do build them, if you do establish them, they will be used. Absolutely.

Mr Kormos: The reference to crack cocaine I appreciate, because indeed I think we are talking about the crack cocaine of gambling.

The Chair: Thank you, Mr Nicol, for going out of order and making an excellent presentation.

Mr Nicol: Thank you.

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ONTARIO METIS ABORIGINAL ASSOCIATION

The Chair: We now go to the Northern Lake Superior Aboriginal Association, Mr Michael McGuire, and I understand he's accompanied by Mr Harry Daniels. Please take a seat, gentlemen. Welcome. Again, you're out of order, and I thank you for being here early. The committee appreciates that. Did I get the names right?

Mr Michael McGuire: Yes, I'm Michael McGuire.

Mr Harry W. Daniels: And I'm Harry W. Daniels.

Mr McGuire: Harry Daniels is our chief negotiator for our association. We have a written presentation and I would like to get Mr Daniels to read it.

Mr Daniels: Just one cosmetic change, Mr Chair. Mr McGuire is the president of the Ontario Metis Aboriginal Association, the provincial organization, and it's the provincial organization making this statement on behalf of and with the Northern Lake Superior Aboriginal Association. The parent body of all the five zones we have in the Northern Lake Superior is in zone 2 here.

Our presentation is going to be brief and then we will entertain questions and discussion. Let me get a glass of water. I'm suffering from a bout of the flu and I'm dehydrated.

Interjection: Making you work.

Mr Daniels: And they're making me work. I thought slavery was over with.

It is the position of the Ontario Metis Aboriginal Association that charity casinos should be exactly that: charity casinos. Operators who have been used in the past regarding bingo parlours only serve to siphon money away from charities. These moneys could be utilized by charities to benefit all those intended to be so benefited.

The degree of expertise required to run a charitable casino is not substantially different from that required to run and operate a business. Charities such as the United

Way that would be located in many municipalities have a capable administration and indeed may choose to operate charitable casinos and service agencies that rely on the United Way.

In the case of the Ontario Metis Aboriginal Association, the administration and level of expertise that exists within the association is certainly sufficient to effectively operate a charity casino. In the operation of a charity casino it is assumed for this presentation that there are two levels available to operators. Initially, there would be an operator of the actual charity casino and a recipient, being a named charity.

It is the submission of the Ontario Metis Aboriginal Association that licensing charitable organizations such as the Ontario Metis Aboriginal Association and possibly the United Way and many other organizations to actually operate the casinos would provide revenue at two levels.

Using the Ontario Metis Aboriginal Association as an example, the operation of a charitable casino or charitable casinos would provide revenue to the organization as a whole. The day-to-day operations would be managed and tightly controlled by individuals whose credentials are approved by the licensing body. The Ontario Metis Aboriginal Association would then in turn provide access to its aboriginal communities regarding certain calendar dates with respect to the revenues generated by the casino. This two-tier approach being recommended by the Ontario Metis Aboriginal Association would allow organizations throughout the province to operate all 50 of the charitable casinos. This would ensure that the money generated by the operation would be a direct benefit to the named charitable operators.

The second tier would ensure that various and diverse charitable organizations are benefited by the actual revenue generated as a result of the charitable casino operation.

Undoubtedly, there will be suggestions from private operators that the level of expertise and accountability required must be met by deferring to the private market. Clearly, this submission must fail in that the level of expertise evidenced by many organizations as regarding charitable operations in the past has been acceptable to the province of Ontario.

If the province of Ontario sees fit to essentially license 50 private operations, then these profit-making organizations would be making a profit to the charitable organizations' detriment. The degree of supervision that could be afforded by any group, either private or charitable, is not changed or impacted by a decision to only allow charitable organizations to run the facilities.

There may be suggestions from various presenters that charitable organizations are not able to arrange financing to purchase sites and to equip sites. This is clearly not the case in that many charitable organizations operate from administrative offices owned by the charitable organization. As well, many charitable organizations own property and have substantial real estate holdings. An example comes to mind relevant to real estate holdings: any particular religious order. Clearly the ability to acquire property and a site of the location is within the reach of selected charitable organizations.

In the event that the particular charity chooses not to purchase property, then clearly property will be available on the open market and leases may be entered into by the particular charity with private-interest landlords.

The desire of the Ontario Metis Aboriginal Association is to ensure that all possible benefits to the charitable organizations are achieved. Utilization of this two-tier approach to provide full access to both tiers and to provide full access to charitable organizations to both tiers will ensure that the government meets the objectives of the program.

Regarding the charitable organizations that are allowed to benefit from the actual calendar date allocations, it is the position of the Ontario Metis Aboriginal Association that these privileges should be on a rotating basis. In the example of the Ontario Metis Aboriginal Association, there are member communities, locals and zones that would all seek to share in the benefits that are created by the charitable casino. It is suggested by the Ontario Metis Aboriginal Association that this benefit program should be designed to ensure equal access to all charitable organizations.

A program that permits flexibility relating to new charitable organizations and initiatives will ensure that the program is not restricted to those charities that are now in existence or will be in existence prior to the implementation of this policy.

That is our written presentation. One addendum, one supplementary note — I should have told you about this, Mike. In the *Globe and Mail* on Wednesday, August 7, "Province Defends Video-Lottery Proposal" — I'm assuming these will be in the casinos — it says that on the front end the government is going to get \$350 million to \$400 million, \$80 million to \$90 million is going to the charities and \$9 million a year is for the anticipated addiction and problems created thereby. In another article someone says that the government is expecting \$260 million a year in net revenue from the first 8,500 — I imagine those are VLTs — as well as \$100 million for charity and \$9 million for addiction treatment and education. Those are conflicting numbers and they are only guesstimates.

The other point we'd like to make to your committee, Mr Chair, is that it seems that the government grabs the money on the front end, on the — it doesn't say the gross, I'm assuming — and at the back end we're getting it on the net. This is not an equitable share of funding. If this is really an honestly charitable venture, why is the government grabbing any money at all? What is the money, this \$350 million to \$400 million, being used for? If we are the people to be running these casinos, supposedly for charitable reasons, then why do we not benefit from that and why does the government benefit?

Are we dealing with a *fait accompli*? Is this the intent of the government, and will this find its way into enactment as a result of Bill 75 finding its way to the floor and through the necessary readings? If there's a preponderance on the proper side of the House, this very well could happen. Then what we are dealing with here, I suggest to you, is a *fait accompli*. This is a tax grab by the government — not necessarily a tax grab; a money

grab. It is heavily weighted — I'll use more gentle words — on the side of the government and it is more charitable to government than it is to the people it is designed to reach.

I ask that question of this assembly here, if anybody could answer it, and we're willing, in the time allotted, to entertain any questions that may be posed to us.

1050

Mr Crozier: Thank you, Mr Daniels and Mr McGuire. Mr Daniels, you've led right into the question I was going to ask you. In fact, I was going to make a statement and see how you responded to it. The title of this bill is to "regulate alcohol and gaming in the public interest," another part of it is "to amend certain statutes related to liquor and gaming," but it says also "to fund charities through the responsible management of video lotteries." Well, that's a scam. It's not to fund charities at all.

You've hit the nail on the head. This government needs money. I suggest, as you have, that the reason the introduction of VLTs surprised many of us was that only weeks before the budget was announced, those who are close to these kinds of activities were not expecting that VLTs would be introduced as part of the budget. I want your question to be answered by the government, of course, but we can only assume that what happened was that the finance boys came along and said: "Wait a minute, government. With the reduction in revenue that you're going to suffer through the tax cut, you're just going to need more money."

I agree with you, sir. If this were truly in the interest of funding charities, the government would be in the control business, in the regulation business, but they wouldn't be sharing it. They need the money, and I think you've answered the question in the question itself. I'm pleased that you brought this forward and I think that if the government were being honest and straightforward with us and really wanted to help charities, the answer to your question would be, "You're right, sir; we don't want any of the money." But they do. They need it. They can't survive without it.

Mr Kormos: I'll use some of my time to respond very briefly, because the Chair is only going to give me two minutes. He's going to cut me off so fast it'll make my eyes water.

Mr Daniels: Go for it.

Mr Kormos: Here you are, laying it out on the line, and one of the problems is that the minister was in front of this committee on Tuesday this week and we asked him all sorts of questions: "What's the take of the government going to be?" "I don't know"; "What's the return for the bettor going to be?" "I don't know"; "What's going to be the piece of the action?" because these are going to be privately owned slots; there are big bucks here. We know that. "What's going to be their take?" "I don't know."

We're dancing in a fog. The government hasn't got the slightest idea of what it's embarking on. Indeed, yesterday it was put to us that in view of the fact that the government is committing itself to 2% of the proceeds to addiction treatment, some \$33 million, depending upon which data you rely on, the government either anticipates gross addiction problems, to be providing and committing

itself to \$33 million for treatment of addiction, or it anticipates an epidemic of addictions, or it intends to give these people a windfall, or it simply hasn't done any planning.

Quite frankly, I think it does anticipate addiction problems, but at the end of the day, not having done any planning, any meaningful consultation, the fact is that this is going to go through the Legislature like crap through a goose, without any of that planning ever having been achieved at that point yet. That's the sad reality of it. I hope they've taken heed. We'll undoubtedly be referring to some of your comments when this comes up for debate in the Legislature.

Mr Daniels: I don't know if I agree with your metaphor, but anything in terms of money at this point in time, Mr Chair, and the honourable member is speaking to this, is purely speculative. However, I think the question we have to ask here, and it should be answered by this committee before it goes to the House and before it is enacted, is, how do you define charities? Is the government now defined as a charity? That is the question to ask.

Mr Guzzo: Three more years of Bob Rae and we would have been.

Mr Daniels: Look, as an old-time NDPer, I don't like that. No, I'm just kidding.

The thing is, sir, that if this is to be for charitable reasons, how then do we define charities? I'd like the questions I've asked prior to this — and they're pretty speculative at this point in time; I understand that. With respect, I would like to know two things: why the government is grabbing most of the money, I think about 60% of it or more, up front in this formula; secondly, how do we define charities and why is not all of this money going to the charities and to the people it's supposed to meet? That is a question that should be answered today, to me and to my president and our organization, and it has to be answered to the House and to the people of Ontario.

Mr Kormos: We concur.

Mr Flaherty: Mr Daniels, good morning. You strike me as a person who is in touch with the real world, and therefore I assume you're familiar with the reality in Ontario today that no legitimate sources, except criminal sources, are receiving any money from the 15,000 to 25,000 illegal video lotteries that are operating in the province of Ontario. You are aware of that?

Mr Daniels: That may be so.

Mr Flaherty: The point I want to make with you is that we're dealing here with Bill 75. You've raised a number of points that are quite important about implementation, but the attempt here by the government of Ontario is to take control of criminal illegal activity that's going on in the province of Ontario today: 15,000 to 25,000 illegal machines. You've referred to some of the figures, the staggering amount of money that is going to others, including outside the province of Ontario, to illegal sources.

The first step, I'd suggest to you, and I'd hope you support us in this, is to get control of the situation, to have enabling legislation, which Bill 75 is, so that the government can legalize, control, manage and phase in the introduction of VLs in the province of Ontario.

Of course, we then have to look at the definition of charities, which you've mentioned, which is absolutely important, and there will be further consultations on that. It's crucial but it's not something that's in Bill 75. I hope we would have your support in getting control of the situation initially and then moving to the implementation discussions.

Mr Daniels: Sir, I have no qualms about there being regulations — may I, Mr Chair?

Mr Flaherty: I asked the question.

Mr Daniels: I have no qualms that there be a regulatory body, that there be the proper kinds of legislation and the controls and checks and balances and all those things that meet the situation in a planned and considered manner. I think the question that I asked here, and it is not being answered, is that — there are a number of questions. How do we define charities? Is the government another charity for the purposes of this bill? Secondly, if they aren't, why are they grabbing in excess of — in pretty speculative figures, of course — \$300 million a year up front?

Mr Flaherty: They are speculative figures.

Mr Daniels: Okay, that being said, whether it's \$5 or \$10 and we get 50 cents, why does the government get the lion's share?

Mr Flaherty: You appreciate that in terms of charities as presently defined, the benefits to charities from so-called Monte Carlo nights would be 10 times more under this legislation: 10 times more than presently, 10 times as much to the charities as presently defined in the province of Ontario. Would your group be one of the groups that would apply for a permanent charity gaming hall?

Mr Daniels: That's our intent, about 49 of them.

Mr Flaherty: That would benefit the charities that you benefit as well in your work.

Mr Daniels: At least five of them, because we have five zones and we have a large population of 250,000 people in the province of Ontario.

Mr Crozier: You did say you were an NDPer. You're not going to get one.

The Chair: Mr Daniels, Mr McGuire, I thank you very much for attending today.

Mr Daniels: That's the end of our presentation?

The Chair: That is the end of your presentation, yes. Time constraints. We'd like to hear from as many people as possible and I know 20 minutes is really not adequate, but it's the best we can do. We definitely wanted to be here in Thunder Bay to hear from individuals from the north.

Mr Daniels: We appreciate that, but for my edification and your edification, we may in other venues and other fora be appearing before your committee again, our zone members and so forth.

The Chair: We'll look forward to hearing from them.

Mr Daniels: This is going to be a protracted debate, I can tell — prolonged.

1100

JEAN MORRISON

The Chair: If we can proceed to Ms Jean Morrison. Good morning. You are Jean Morrison, for the purposes of Hansard, and you are here as an individual?

Mrs Jean Morrison: That's right. I'm an individual.

The Chair: Good. Please proceed.

Mrs Morrison: I'm active in a number of community organizations, and the reason I'm here is that I'm gravely concerned that this government and all governments are promoting a culture of gambling as a solution to their economic woes. I accept that gambling is here to stay and I have even gambled myself on occasion, but I'm opposed to the deployment of VLTs in general for reasons which should become clear in my presentation.

Whether some of us like it or not, governments of all political stripes are in the gambling business. They say they are in it for the best possible motives: to create jobs, to stimulate tourism, to spur economic development, to generate revenue, and of course to stem the flow of Ontario gambling dollars flooding into the US. Governments argue that the worldwide proliferation of gambling proves that people want to gamble and that they're going to do it whether it's legal or not. They justify legalizing casinos and VLTs by saying they're only responding to the wishes of their electorates and if they don't get into the gambling business, they'll miss out on the gravy train.

You will be familiar with these arguments. They were used by the previous government in promoting the Windsor casino, and just this week consumer minister Norm Sterling used them again to justify the use of VLTs in Ontario. You will also recall the arguments used against the extension of gambling through casinos and VLTs. Here's one quote:

"Sure the income comes, the money comes, but there are some side-effects that aren't so wonderful: drug trafficking, increased petty crimes, increased prostitution, policing costs, societal costs, gambling addiction."

These words should sound familiar to all the panellists here because these words by Donald Trump were read into the record by the present provincial Treasurer, Ernie Eves, when in opposition. Mr Eves also put forth many arguments of his own:

"Governments of all political stripes...seem to be becoming more and more addicted themselves to the revenue that's obtained from gambling; Nova Scotia, for example, with respect to its video machines.... That's a whole other issue I will deal with in due course," he said.

Unfortunately, I couldn't find what Mr Eves said about Nova Scotia's failed experiment with VLTs. It probably would be nice to see what he said in 1993. He also warned about the fallout from Casino Windsor on charity gambling. Mr Eves was right in 1993. He was right about the close ties between gambling and organized crime, prostitution and drug trafficking.

He was also right about the fallout on charity gambling. Charity bingos in Thunder Bay help keep my favourite cultural institutions alive, groups like the symphony, the historical museum, the art gallery and the community auditorium, all of which contribute mightily to making Thunder Bay a great place to live. Now that Mr Eves is in government, is he no longer concerned about the fate of charities dependent on bingo and Nevada tickets once their players get hooked on VLTs? When overmilked, the cow will run dry, and even the

most ardent player has available only so much money to risk on a regular basis.

Over the past two decades or so, governments of all political parties have championed lotteries as a lucrative source of revenue. Now they're branching out into casinos and VLTs even though, as we heard several times from Mr Kormos today, VLTs are known as the crack cocaine of the gambling industry; even though playing them has been called an autistic, mindless, solitary and addictive activity with no redeeming social benefit whatsoever; even though they result in a sharp increase of impulse buying by local residents; even though the tourist spinoff effect of gambling has proven minimal in most communities except those towns built around gaming, like Vegas; even though the cash wasted can be spent more productively in the community; even though VLTs create social problems which require more policing, more treatment centres and bring about more suffering for families of reckless and compulsive gamblers.

It is really nice and thoughtful that 2% of VLT revenues will be used for addiction treatment, but wouldn't it be more rational not to encourage addiction and wasteful spending in the first place? Wouldn't it be rational not to foster false hope as the lottery ads do and as the VLT ads surely will? Wouldn't it be rational not to encourage the idea that instead of working for money you can get rich by doing nothing except investing a couple of bucks but which ends up being more and more bucks without any return for the vast majority? Is this rational from a government which not only says it believes in the work ethic but proves it by bringing in workfare so that welfare recipients will learn that you must work to earn your daily bread crust?

Yet this same government's policies of downsizing and cutbacks are creating massive unemployment in all public services, with devastating spinoff effects for the economy and for countless men, women and children. By its actions, the government seems to be saying that it does not believe in meaningful work after all. By its actions, more and more people will be driven to gambling through desperation, and the government is encouraging them to do so. They are making a former criminal activity seem respectable.

It is not original for me to say that lotteries, Nevada tickets, VLTs, casinos etc are a tax on the poor, that they're a form of taxation on those who can least afford it — volunteer taxation, admittedly, but as someone else has said: "Only people with money to spare gamble for entertainment; the poor gamble to change their lives. The wealthy have more sophisticated ways of gambling for real, in the stock market," or in the gambling industry itself where the profits can be phenomenal.

I recognize that governments are faced with enormous debt incurred in large measure not by waste in the public service or by welfare fraud but by revolutionary changes in the global economy. John Ralston Saul states in *The Unconscious Civilization* that as corporations pay less and less of their share of taxes, with impunity, the middle class and the poor are taking the hit. But they can hardly make up the difference even with the GST and user fees and cuts to programs, especially when they're unemployed or on welfare and especially with the 30% tax cut.

"The most disturbing consequence of government's loss of corporate tax revenues has been the rise of publicly organized gambling," Saul states.

1110

The hundreds of millions, in some countries billions, of dollars raised this way come in large part from the most discouraged part of the population. "It's their choice," the cynical will say. But it is the governments of those citizens, governments constantly going on about the need for hard work and initiative, who suddenly are calling on these same citizens via vast advertising to win instant millions for \$5 or \$1,000 for \$1.

Each year billions of dollars are spent in gambling. Each day trillions of dollars are moved around the world by currency traders. The money is there for governments to fund all the things which make for a decent and fair society, but for that to happen, governments need to stop using gambling as a panacea for their economic woes. They need to stop promoting selfishness as symbolized by pernicious forms of gambling.

I therefore urge the government not to proceed with the installation of VLTs in Ontario.

Mr Kormos: Thank you kindly. One of the things that concerns me about the course of these hearings is that we've persistently heard the slots referred to as entertainment. It's peculiar, it's bizarre, that we have a government that's complicitous with a very profitable industry, the gambling industry, controlled as much, at least in the United States, by organized crime as by others; that's eager to create an illusion that playing the slots is entertainment.

The slots are all about losing, not winning. That's what it's about. Casino Rama, over the course of the last week, you'll note, down in Orillia there, has issued press releases about the winners, but the vast majority who leave that place are losers.

I took a look at the Grand Portage brochure you have here at the hotel promoting it, and they talk about winning. They talk about a return on your dollar. They talk about the big payoffs and they show pictures of happy, smiling faces. They don't show the faces of people leaving that joint with their pockets emptied, wondering whether they're going to have enough gas in the car to get home.

When I spoke with one of the advocates of gambling — slots — yesterday, he said, "You leave a movie without anything and they call movies entertainment." Well, maybe he doesn't go to plays either or engage in other bona fide forms of entertainment.

There's something awfully perverse and I think there's something, quite frankly, insidious about trying to create the illusion that this grab at the brass ring — the Ontario Lottery Corp has done it for years. They send a little glossy flyer similar to the Grand Portage casino saying: "Here's a two-for-one ticket. You can go buy one and get a second one free." The whole business is about getting the people to spend the most amount of money and walk out with the least amount of winnings. That's how you make money in this business, and this government's a party to it.

Mr Morrison: It seems to me that the VLTs particularly promote individualism; there's no social interaction

whatsoever. Perhaps in some forms of gambling there is that, and you feel you're part of it, but this seems just to mesmerize people. There is some entertainment. I suppose it's exciting to think, "Perhaps I will win \$250 when the coins all come out," but I gather they do something else in video machines. I really do believe they're addictive, though.

Mr Hudak: Thank you, Mrs Morrison, for your presentation. You don't seem to be gaining or losing directly from VLTs, so I appreciate your sincerity, your presentation. Your general theme is that it's low income that drives gaming, that people who are in low-income brackets tend to gamble more and be caught up in it pursuing dreams. But we've heard arguments that look at gambling addiction as a predisposition across income scales — certainly the Addiction Research Foundation has shown this, Dr Jacobs and a number of other sources — because it gives a high, it makes them feel good. They're the boss when they're throwing those dice; everybody looks up to them.

In fact, the Addiction Research Foundation paper I have in front of me looks at a couple of scores in terms of addiction. Interestingly, the people in the \$60,000-to-\$80,000 income bracket are the most susceptible to gambling, the higher-income. At the same time, the higher the education level, under addiction research, the more likely they are to have some sort of addiction problem. In fact, in the Gfellner study, 80% of those whom she found had addictions had a high school education or better.

So I don't go along with the class warfare sort of thing. With all due respect, I find that a bit of propaganda, because it's easy then to say that low-income people can't make the decisions on their own; in fact, that the government ought to step in and decide where they should spend their money.

But the better way of going about dealing with pathological gambling, the 1.5% or whatever who have these problems, I would think, is to realize the way it affects them, that it gives them a physiological high, a psychological high, and set aside money to treat them, because they have this predisposition. I think that's why this government, unlike previous governments and unlike other governments in other provinces or even states, as far as I know, is setting aside a substantial portion of revenue, 2%, to try to treat those individuals to find other ways of coping with that stress or that disposition, to make them more productive individuals for everybody across income scales. Those are some interesting stats.

Mr Klees has a question, so I'll pass the microphone.

The Chair: No, I believe it's Mr Young.

Mrs Morrison: Could I respond to that comment first?

The Chair: Unfortunately, it wasn't a question, it was a statement, just as Mr Kormos's was a statement rather than a question, and really it doesn't deserve any response.

Mr Young: We've heard some selected quotations out of the Gfellner report from Brandon University. I want to point out, in the executive summary, what the report actually said, and I think it will reassure you somewhat.

It said that, on the whole, VLT users gamble once or twice a week, an average of 32.5 minutes, that over 90%

have a budget and stick to it whether they win or lose. The conclusion was: "Gambling is engaged in regularly by young adults in a social context. It is affordable activity that is budgeted." As well, when she refers to problem gamblers, she points out that problem gamblers engaged in nearly twice as many different gambling activities as non-problem gamblers, which would indicate to me that the problem is the person, not the VLTs. Do you have any comments on that?

Mrs Morrison: I think it's been proven that people who are poor will gamble a lot out of desperation, but I don't think that's the main issue. I think government shouldn't be promoting this gambling culture. There was a very interesting article in our paper today on the fact that for every dollar governments invest in cultural activities, they get \$1.25 back. I would much rather see the government promoting more meaningful activities, putting its money into education where it'll get the money back, and into health care and so on. I really feel that promoting gambling the way the governments are and extending it and extending it the way they are is not promoting a healthy, creative kind of society.

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Mr Crozier: Thank you, Mrs Morrison. I compliment you for coming out and speaking to the committee, because I suspect that you represent the silent majority. We have a lineup of experts who are going to come before this committee over the next three weeks, and like economists, if you put all the experts in a row, what you have is a long row of experts — nothing more, nothing less. As we go on and listen to these experts on both sides of the story, it's people like you I like to listen to because it's the feeling I get in my gut about this subject that starts to bother me.

It's headlines like this that bother me, from the Canadian Press, "Kids Left While Parents Gamble." That bothers me. That doesn't seem to bother the people who are going to benefit from this because that's something else. That's not going to bother them. They're going to make money off it. They're going to benefit from it. They're not compulsive gamblers, or most of them aren't, probably. So they're happy. But it's that kind of thing that bothers me. It's the feeling I get in my gut, and I appreciate people like you coming out to say this.

You did mention in your comments about what Mr Eves has had to say about this. I have 58 pages of Hansard, all of it objecting to this kind of thing, most of it said by Mr Eves and some of it said by Mr Harris. Mr Harris said on May 17, 1993, "I would offer you the other option, which many American city" — and they love American cities — "and state jurisdictions have used: by giving them a referendum before implementing this about-face in position before significantly changing the lifestyle of communities in Ontario," which is what this government is doing. Do you agree with that? Do you agree with Mr Harris in May 1993 that there should be a referendum?

Mrs Morrison: I'm not really thrilled with referenda as a means of determining social policy. I really feel that when we elect people to the Legislature we expect them to be responsible. I feel that at the municipal level there should be some way of determining what people think.

My main concern is that the moneys that the gambling interests have would be far greater than what the ordinary people would have, so that their advertising campaigns could easily swamp those of ordinary citizens who are opposed to them. It's a very difficult issue. Our last experience with referenda in Canada was certainly a very divisive one in our society and we still haven't quite recovered from that one.

The Chair: Mrs Morrison, thank you for attending today. It was a very sincere presentation.

KLONDIKE CASINO

The Chair: Our next presentation is from the Klondike Casino, Don Ohlgren and Anne Ohlgren. Good morning and welcome.

Mr Don Ohlgren: Thank you for the opportunity to address your committee today. My name is Don Ohlgren. I'm the president of Ranpet Investments Ltd, operating as Klondike Casino. I am accompanied today by my wife, Anne, who's the vice-president of our company. Klondike Casino is a registered supplier of gaming equipment and services and a registered manufacturer of gaming equipment in the province of Ontario. We assist charities to raise funds throughout the northern part of the province, but most especially in Thunder Bay, Sudbury, North Bay and Timmins. I'm also the president of the Association of Registered Casino Operators of Ontario and for the past two years I've been part of an advisory committee meeting with the Gaming Control Commission on a regular basis to help improve the charitable gaming industry in this province.

It is our opinion that the government has moved in the right direction by introducing video lottery terminals in controlled environments. Their presence in the soon-to-be-established permanent charity casinos will greatly enhance the charities' ability to raise funds for their community endeavours. These measures will also ensure the survival of the industry itself.

Legalized gaming was first introduced in this province as a method for charities to raise funds. We applaud the decision by the government to allow for permanency of location for these events. We believe the charity casino industry is a worthwhile community-based endeavour which will find much more widespread acceptance among the general populace of Ontario than high-stakes commercial gaming such as is found at Windsor, Rama and soon-to-be Niagara Falls.

Generally speaking, the objections to VLTs are polarized around two factions. Some religious groups feel they are immoral; other opponents feel they are dangerous in terms of addiction, particularly of young people.

With regard to the first group, persons who feel gaming machines are immoral generally have that same view about all forms of gaming and wish to have that view imposed on the rest of the society in which they live. This may prove to be a dangerous precedent if we allow a relatively small group of people to dictate to us through the law what we should and should not do in terms of recreation based upon their religious convictions. While we respect their right to their views and convic-

tions, we do not believe it is right for them to impose their religious views on the rest of society.

With regard to the question of addiction, there is no doubt that gambling addictions are a social problem. However, in a speech last February to the Ontario Charitable Gaming Congress in Niagara Falls, the head of the Canadian Foundation on Compulsive Gambling stated that it is not gambling itself which creates these problems, but rather an inherent propensity in the person to fall victim to the need to gamble. Almost every aspect of life can have adverse effects on certain people. We do not prohibit alcohol because a segment of the population is prone to alcoholism. Rather we try as a society to protect these people in a different way; that is, by allowing for the majority to enjoy these aspects of life while providing a controlled environment to protect those who might fall victim to addiction.

The decision to prohibit persons under the age of 19 to play or even have physical access to the machines is an example of a government trying to protect what it perceives to be a vulnerable segment of society from the possibility of addiction. Provision is to be made for a portion of the profits of VLTs to go towards research into gaming addictions, and we applaud this measure.

Mrs Anne Ohlgren: We wonder, if the whole gaming industry did not exist, would the 1% of people prone to compulsive problems be fine and have no problems? We believe that because a person enjoys doing something a lot does not necessarily mean they are addicted to it. Gambling is not inherently evil. It is a natural human trait to take risks, sometimes for money. If we were not risk-takers as a species, we would have ceased to exist. Recreational gaming is one aspect of this human trait; that's why it's so popular.

Recently, the annual Survey of Casino Entertainment commissioned by Harrah's found that the traditional gambler who visits casinos in Las Vegas or Atlantic City is a 48-year-old man or woman with a household income of \$43,000. Gamblers who visit new destination casinos in Minnesota and Wisconsin, for example, are 46 years old with a household income of \$37,000. These figures are in US dollars. The survey also shows that casino gamblers are slightly better educated and more of them have white-collar jobs, 43% versus 39% of the general working population in the US.

In 1992, Harrah's survey reported that 55% of Americans thought gambling was acceptable for anyone, while 10% said gambling was not acceptable for anyone. The remainder were personally opposed to gambling but said others should have the right to gamble if they wished. By 1995, these figures had changed to show that 61% were in favour of gambling for anyone. Those totally opposed fell to 9%. What is believed to be behind these changes is the spread of gaming opportunities in the US, where communities have discovered that gaming isn't quite the evil monster they thought it was going to be.

One thing we can tell you for sure about people who enjoy gaming is that they are sick and tired of being labelled as mindless addicts who will fall immediately under the spell of the wicked VLT wizard.

It is also our belief that some groups are expressing opposition to these machines simply because they have

been proposed by a political party they themselves do not support.

What will these changes mean for charities in Thunder Bay? They will now have a chance to accomplish four things.

Firstly, they can increase their current profitability in charity casinos with the addition of these machines. This is especially important in these days of diminishing funds for organizations from government sources. Currently, with blackjack and poker, our northern charities average a profit per event of approximately \$2,000. VLTs and permanent venues with more table games have the potential to increase this amount to \$20,000 profit per event.

Secondly, they will be able to provide local residents and visitors with a popular form of entertainment. These machines are fun. They offer creative graphics, and people enjoy using them.

Thirdly, they can assist in stemming the flow of millions of dollars from this city into the American casino at Grand Portage. This casino, located only 45 minutes from the city, survives solely on revenues taken from this community, estimated conservatively at over \$100 million annually. As proof of this, you have only to look at their massive advertising campaigns in this area. They know where their money comes from. Beyond Grand Portage, there are many other casinos in Minnesota at which residents of this city spend hundreds of millions of dollars annually. Ask them why they go there and do not attend Klondike Casino's local events and they will tell you it's because we do not have machines. It's imperative that we be able to offer VLTs to our playing public.

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Fourthly, the chief of Thunder Bay's police force recently stated at a council meeting that there are 40 illegal slot machines currently operating in this city. While we are not entirely sure where the chief obtained this number or why nothing is done about them if they are known to exist, it's likely that legalizing VLTs in charity casinos will dry up the clientele for these illegal operations. It's our belief that there are substantially more than 40 illegal machines currently operating in this city.

Another topic we would like to address is the matter of combining the liquor and gaming licensing into one commission. We would hope that this will mean substantial changes in the manner in which gaming events are licensed. Since its creation by the New Democrats, the Gaming Control Commission has struggled to keep up with the demands of a burgeoning industry because it has never had enough staff to cope with the demands of the system in place at the moment.

This system requires a charity to apply for a licence for every three-day event they conduct. This creates a steady stream of unnecessary paperwork. It entails our tying up two full-time staff just to help the charities keep track of the bureaucracy involved with running two events per week in our two principal cities. The combination of this requirement, their lack of adequate staff and the sometimes different expectations and interpretations of licensing officers has often resulted in charities not receiving licences in time to advertise or even operate in some cases.

Obviously, if permanent venues are to be a success, this cannot be allowed to happen. People are already dependent on this industry for their livelihood. The government cannot expect the charity casino industry to be a credible and successful industry if it cannot attract good personnel. This is very difficult when an employee's wage can suddenly be cut off because the casino did not operate for lack of a licence. For example, none of our 50 employees in Sudbury was able to work on August 5, 6 and 7 because of a charity's licensing difficulties with a particular licensing officer. We have to be able to offer our employees the same kind of security currently enjoyed by the commercial gaming sector. Otherwise, we will continue to be simply an inexpensive training ground for these commercial venues.

Our industry was decimated by the recent opening of Casino Rama. We provided that casino with a well-trained and experienced pool of potential employees. The same thing will happen with the opening of Niagara Falls. We do not know how the commission will select charities for the new permanent casinos. However, once selected, an alternative or improved method of licensing must be put into place.

The Gaming Control Commission was conceived by the Liberals, brought into being by the NDP and hopefully now will be reorganized properly by the Conservatives.

Sufficient manpower is also essential if the commission is to actually enforce the strict controls intended for VLTs. There are rules and regulations governing gaming in this province now, but unfortunately, the commission does not have sufficient personnel to enforce them properly and many police officers will tell you privately they do not consider illegal gaming a serious crime warranting their attention. With this in mind, we would suggest that a few locations with most of the machines would be easier to regulate than many locations with two or three. Charity casinos are tailor-made for this scenario.

Mr Ohlgren: Another topic we would like to address is advertising. Ontario's charity casino operators are heavily restricted in the advertising they are allowed to do for their events. Foreign operators suffer no such restrictions. Klondike locally is not allowed to advertise a specific event for a charity unless the licence number is issued. This can sometimes be as late as the day of the event. How can people attend and support the charity if they don't know where the event is? Yet the casino at Grand Portage can advertise whatever, whenever and wherever it likes. Please, while you're here, drive around this city, listen to all our radios, watch any TV, read the newspaper, go to a ball game, come to our winter carnival — everywhere you will be bombarded by billboard advertising, radio, TV and newspaper commercials, on and on. Let's have a level playing field. It's our belief that foreign casinos should be governed by the same advertising regulations as Canadian casinos on our own airwaves and in our own advertising markets.

We are not allowed to mention anything in our advertising which might be deemed as an inducement to gamble. For example, we can't give free rides to our events. Yet Grand Portage openly advertises free transportation to their casino, as well as many other freebies

and inducements, including a player club, free entertainment and refunds for playing. A tourist coming to this city could certainly be forgiven for believing that Grand Portage Lodge and Casino are actually part of this city. Why must we keep shooting ourselves in the foot? Even within our own country, the Ontario Lottery Corp is allowed to advertise the potential benefits of buying its tickets. If charity casino operators are to be working under the auspices of the Ontario Lottery Corp in the management of VLTs, we hope these advertising inconsistencies will be done away with and a more level playing field enacted.

As a northern company, we are concerned not only with Thunder Bay but with other cities such as Sault Ste Marie, Sudbury, North Bay and Timmins. The previous comments we made about the casino at Grand Portage and its impact in this city can be multiplied at least 100 times for the casino in Sault Ste Marie, Michigan, across from the Canadian Sault. Vegas Kewadin draws hundreds of millions of dollars from both the Canadian Sault and Sudbury. Its estimated earnings, profit after expenses, exceed \$300 million a year. A charity casino with VLTs in Sault Ste Marie would be an excellent means of keeping dollars in Canada and benefiting local charity endeavours. Given this chance, Canadian entrepreneurs operating fund-raising casinos are ready and, I might add, able to earn substantial amounts of money for this province and for its charities.

There seems to be an underlying current of opinion that the Ontario charity casino operator does not really know what he's doing and that the major American operators are the only ones who can be profitable. There is not one American, Australian, European, aboriginal or any other casino company in the world that operates under the conditions that we do.

I attended the World Gaming Congress in Las Vegas last October. The American operators I spoke with could not believe that we operate (a) with only two games currently, one of which, blackjack, is the most volatile game there is; (b) a maximum \$10 betting limit; (c) in a different venue every three days so no one knows where you are; (d) a limited three-day event so that any losses can't be spread over a longer period, thus have to be absorbed; (e) with no control over rents charged by the venues because we are roving and at their mercy. You can imagine how tired we get of these folks looking at us and our operations as oddities, because the simple fact is, while they would not even consider doing this, we not only do it, but we make money at it. Yes, we make money doing it, as well as providing profits for our charities.

Attached to the back of our presentation is a list of the groups we currently work for here in this city. Some of them will be speaking today. Others will not have the opportunity. Most northern charities are staffed by very small groups of dedicated volunteers who work at other jobs during the day. While we cannot presume to speak for them, we can tell you that they support the creation of permanent locations for charity gaming. They have concerns, but most of them centre on how the revenues will be shared, how numbers will be decided upon, how charities will be chosen and so on.

In closing therefore, we would like to add that we feel this industry should remain a community-based one. We do not believe the public wants to see glitzy, high-stakes casinos all across Ontario. While Las Vegas is fun to visit, it's not as much fun having it in your backyard. Our fear is that, following the tradition of the commercial sector, charity casinos will be given away to the Americans. We urge the government to bear in mind that Ontario's casino operators have been making money for charity in the worst operating conditions imaginable, conditions that also preclude proper enforcement. Where were the US operators when times were bad in this industry? Nowhere to be seen. Now they all sense a possibility of profit and they're suddenly expressing interest.

All we ask is that it not be assumed that we do not know what we are doing. Klondike Casino has consistently returned 25% of the casino hold to its charities as profits. Contrast this with the American company hired to manage the native casino at Rat Portage. Has the band there ever seen one penny of profit since they began operating two years ago? And anyone in this city will tell you that Klondike's customer service is far superior to that experienced at Grand Portage.

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Current regulations governing charity casinos, their games, their advertising, their availability, benefit only our foreign competition in this area. To all intents and purposes, Thunder Bay already has VLTs. The only problem is that their revenues do not go to charity but to a foreign native band just across the border. Klondike Casino and other registered operators need the government help outlined in Bill 75 to keep those millions of dollars in this community and in others like it across the northern part of Ontario.

Mrs Ohlgren: Klondike Casino is a small, family business run by northerners. We and our staff are proud of what we do and we make no apologies for it. The previous government was always reluctant to make changes in the imperfect structure they created for gaming in this province. Thanks to northern tenacity and a strong belief in what we do, we have survived in the face of government neglect and intense foreign competition. Our mission is to raise funds for Canadian charities by providing professional gaming entertainment and exceptional customer service. We are glad this government has seen fit to help us enhance our entertainment and fund-raising industry with these new opportunities. Thank you.

The Chair: I thank you both for your presentation. Your time has elapsed, so there is no time for questions.

The Chair: I welcome Mr Gravelle, the member for Port Arthur, to our meeting. As a courtesy — we have 15 minutes due to a no-show — he has one or two presenters he would like to use that 15 minutes. It cannot be done without the unanimous consent of this committee. Is there any objection to Mr Gravelle presenting one or two individuals during that 15 minute-period?

Mr Gravelle: I am sure the committee would be very glad to have them. They'd be quick presentations.

I have Mr Randy Valois, a representative of the 84 Air Cadet Squadron who wanted to speak.

The Chair: Is there any objection? If there's no objection by any member of the committee, I assume consent. Therefore, we would be pleased to hear from you, sir.

Mr Gravelle: Thank you very much. I'm going to go and check on the other group, Mr Chair.

RANDY VALOIS

Mr Randy Valois: My name is Randy Valois. I'm a representative of the sponsoring committee for the 84th Air Cadet Squadron, which uses Klondike Casino as the major fund-raiser for projects for young people in the area.

We are wholeheartedly in support of VLTs as we feel in the 1990s and the future we do not have the support base of public donations that existed in the past. It's necessary now to purport some type of entertainment or prize for any money given out and, in my opinion, people feel gambling provides both entertainment and the opportunity to win a prize for their money given.

The problem that exists for us is that we have some questions. What percentage of the funds from the VLTs will go to operations? What percentage goes to the government? A major question is, what percentage will go to charities? Will service clubs be allowed to have VLTs? If they're allowed to have these machines, how will it be decided how many? Will it be decided on the square footage of their building or by their membership? As everybody well knows, service clubs are a major, major contributor to charities. Every service club that exists in Ontario is a major contributor to many charities. These machines in service clubs will be maintained by whom? What will be the repercussions of service clubs, which are non-profit organizations, having these machines in conjunction with private establishments? What authority will private establishments have in deciding which, if any, service clubs can have VLTs and how many machines you can have? What percentage of the intake will be for rental, or will these service clubs be allowed to purchase these machines?

I heard lots of people here talking today about lots of things, and many people are very smart, talking about various things. You can read from lots of reports and everything else like this. Gambling exists. I can see Bill 75 trying to legalize it. Legalizing it is not going to get rid of the illegal stuff, but at least we're going to be able to get some things out in the open. Mostly, my concern is that if you're doing this for charities, what are we going to get? I don't mind working very hard a number of hours per day for a charity if I'm going to get something from it, but I would appreciate knowing, if these come in, what percentage are we going to get? I can understand the government wanting a certain percentage and I can understand businesses wanting a certain percentage, but what I'm concerned about is, what are charities going to get out of this? I know you can't give me facts and figures at this time, but I'd like to express to you some of the concerns, as one of the charities out there working very hard, that come to us.

Mr Gerard Kennedy (York South): I have a quick question. Just to make you aware, the estimates for the

VLTs — you heard the previous person talk about the gaming halls, which they're actually calling charity casinos. There are 50 small casinos going to be set up across the province, with no reference to the community about whether it wants them or not. The benefit of that will be shared with charities, but they'll be in direct competition with thousands of VLTs, of slot machines in bars and potentially in restaurants. But the legislation enables them to be in bars. This is the kind of thing that will compete with charities.

I don't know what the dependence is of the Air Cadets on gambling break-open tickets or other kinds of casino nights and so on right now, but there is 40% to 60% cannibalization — and that's a word used yesterday by somebody from a racetrack — by this form of gambling. A lot of charitable gambling enterprises have come before us objecting to this because of the impact it's likely to have. It's important to realize that this is not a controlled form of gambling for the benefit of charity. What the Treasurer said in the budget was 10% only of the VLT machines is going to charities and the much larger part is going to the government for revenue to fund their misaligned balance sheet.

Mr Valois: As we know, now we have break-open tickets, a major source for some organizations of raising money. A certain percentage of that has to go to charity; they're allowed to keep a certain portion. If you're going to allow VLTs to go into a bar, they may have to live under the same regulations as the break-open tickets, which most of them do sell now anyway. If you're going to bring in VLTs, let's have parameters, let's say: "Fine, you've got five machines. This is the percentage you're allowed to keep, and a certain percentage has to go to this." There are many organizations they could support or be told they have to support, or they may wish to do so themselves.

Mr Kennedy: While charities get the full benefit of the break-open tickets, the government would restrict it to 10% for the VLTs.

I want to pass to Mike.

Mr Gravelle: The point Gerard is making is that if you do rely on the break-open tickets, the Nevadas, the evidence is pretty clear that once the VLTs come in, the dropoff — and that's the term "cannibalization," a dandy word; in essence it means they're sort of eating their own — the dropoff in people deciding to go the break-open route drops off considerably as the VLT takes over.

I'm glad you had an opportunity, Randy, to express some of your concerns, because I think it's an example of a number of charities that are going to be in the same situation. In essence they're going to lose control of the opportunity to basically raise funds in the manner they have. Ultimately, the long and the short of it is that if all this goes forward as presently planned, 10% will be going back to charities, but it'll be a situation where you'll be lobbying to get your share of the charity dollar, and previous representatives have talked about what qualifies as a charity. I think there are going to be some really negative effects in terms of the charities, and Jean Morrison earlier made some reference to some of the other cultural activities that will be affected. I think the implications of that have not been well-thought-out. It

came up quite frequently yesterday and I think it's worth people understanding that it's going to have a very negative impact on the charities.

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Mr Kormos: Your concerns have been raised over the course of this week since Tuesday. You've been here since people started this morning; you've seen the competing interests. The horse racing industry wants slots, but just at the racetrack because they know there's a whole lot of money to be made there. "To heck with the rest of them. We want slots. We're best capable of controlling slots." They want to reap the profits for themselves. We all understand that. The private sector sponsors of what is now charitable gaming by virtue of roving Monte Carlo nights, they want slots too and they're prepared to make an argument on behalf of their role. The problem is that with the proposal under way now in terms of fixed charitable operators, you're talking about private ownership and continuation of some very mixed interests. The hotel association, Days Inn, other hotels and places like that that have licensed premises, wants slots too.

You see, nobody's prepared to go so far as to say, "Why don't we give slots to corner stores then?" The argument is, "They can't control who uses them." Why not? If they're prepared to control who purchases tobacco, why aren't they capable of controlling who uses a slot. If they're prepared to control who purchases a 6/49 ticket —

I think you're seeing the beginning of a process — and again, I'd be happy to come back in five years and say I was wrong — where we're going to see a pervasiveness of slots across the province that is going to transcend even the proposal that's here now. There's just too much money to be made, and not by the little people; by the big people, the people who own the slots, and quite frankly, by the prospect of organized crime. I can't think of a slot jurisdiction over 10 years old that hasn't been corrupted, infiltrated by organized crime.

To get back to charities, though, the sad reality is that you're going to be at the end — you're a rationalization for the slots.

Mr Valois: You're going to be listening to a whole lot of people who have a whole lot to say who are a whole lot smarter than I am —

Mr Kormos: Not likely.

Mr Valois: — and they're going to tell you a whole lot of smart things. I can't argue with them. They probably went to a whole lot more school than I did and everything.

Mr Kormos: But they're not likely smarter.

Mr Valois: I'm interested in one thing: I have to work very hard to raise money for organizations I believe in and I don't want to get knifed in the back. I'm sick and tired of it. There are many people in this town who work very, very hard and work a lot harder than I do. If you're going to do this for charity and you're going to do something, then put the regulations in. I don't care how you do it. Yes, I'd like to get the government out of debt so my taxes can come down. I don't care what you're going to do. But buying 6/49 and getting Ontario out of debt are about the same amount of odds.

All I'm trying to tell you is that my charities — this isn't the only one; there are other charities I work for — we want to know, what are you going to do to us? That's all we want to know. You told us 10 times we're going to make money. You're going to cut us down to one-day casinos and now you're going to make 10 times the money? Come off it. I don't want that. I want to know. Tell me some numbers.

Mr Kormos: Right on.

The Chair: The last caucus has three minutes, and we have Flaherty, Johnson, Klees and Guzzo.

Mr Flaherty: How is it that we have three minutes when the Liberal caucus took eight minutes?

The Chair: I'm sorry, they did not have eight minutes. I recorded —

Mr Flaherty: The speech by the member from Port Arthur was three to four minutes.

The Chair: He did not have eight minutes; he had three minutes.

Mr Flaherty: I was surprised to hear the member for York South use an inappropriate expression such as "misaligned balance sheets." I would have thought he would have suffered some approbation from the comments of the putative leader of his party, the member for Windsor-Walkerville, who's quoted as saying, with respect to his comments about the crack cocaine of gambling yesterday, that, "Liberals have to get away from the cheap buzzwords of the past." I would hope the member for York South learns from the learned member for Windsor-Walkerville, quoted in the Windsor Star about these cheap buzzwords.

Interjection.

Mr Valois: If you two wanted to talk, we could get on to another question. Did you have a question?

Mr Flaherty: On the break-out tickets, you shouldn't be misled. The evidence that we had yesterday was not that break-out tickets declined in Alberta when VLs were introduced. In fact they declined when casinos were introduced, and that's the actual documentary evidence. When you look at the graphs, that's the reality of what has happened rather than the speculation we hear a lot of here.

With respect to charities, video lotteries in bars will not compete with charities. As you know, the charities will profit to the tune of 10% from those video machines in licensed premises. In fact, from the Monte Carlo perspective, those floating Monte Carlo games, the three-night things, with the permanent charity casinos the commitment is that charities will receive up to 10 times more money than they are receiving now in the province of Ontario. In addition, as you know, the charities receive money from the gaming tables in the charity casinos, so we're looking at up to \$180 million more for the charities of the province.

I understand your concern about the service clubs and so on. I'm a member of the Rotary Club myself and I know how hard the club members of various Lions Clubs and so on work to raise money. That goes to the implementation stage, and I do hope you'll continue to participate in the consultation process when we get to dealing with implementing these matters beyond Bill 75.

Mr Ron Johnson: I wanted to make one brief comment with respect to the misinformation Mr Gravelle gave this committee about five minutes ago in telling you that with the new charity casinos, your charity in essence will simply be lobbying the government for funds, almost implying that all the other fund-raising initiatives your charity takes on, as do all the other charities, will cease to exist. Of course that's not the case at all. The charitable gaming and the VLTs are one small part of the fund-raising that charitable organizations such as the cadets will be going through. The break-open tickets, bingos, all of that, will continue, and if you're involved in that now as an organization, that will continue. Of course there's no lobbying the government to get funds for that; those are things you can do as an organization and are things you're doing now.

I think it's important to make that clear, that by no means does this bill, Bill 75, replace the fund-raising initiatives the charities across this province are doing now. In fact, it enhances it and gives you greater opportunity to raise even more money as a charity than you're able to do now.

Mr Valois: Oh, I absolutely hope so. I feel the government is strong behind charities. Although they cannot give us any financial help, they'll try and implement any program without trying to hinder us.

As I mentioned earlier, we really hope — what makes people happy sometimes is numbers a little better than what we're going with right now. We're having a bit of problem sometimes with the numbers, which is bothering some people who are working very hard for the charities. That's all it is. I mean, is it going to be 25% of this that is going to go to charities? Fine, that's great. Then we know.

The Chair: I thank you very much for ending there today.

We are now adjourned to 1:20 this afternoon.

The committee recessed from 1159 to 1320.

The Chair: Good afternoon, ladies and gentlemen. I should remind you that we have a charter going to Kenora. Therefore, it can leave any time all of the members are assembled to leave; you don't have to wait till seven. I just remind you of that. I think some members have commitments in Kenora this evening and would like to get there as soon as possible.

Mr Guzzo: Therefore, it doesn't have to be non-stop; we can make a stop on the way.

WAYLAND HOTEL

The Chair: Our first presenter is Mr Donald Johnson of the Wayland Hotel. Welcome.

Mr Donald Johnson: I am Donald Johnson. I'm the director also for zone 25, which is Thunder Bay and District Hospitality Association. Hospitality is our name and it is our business. That's why we think Bill 75 is very important to us.

We as an industry are in serious economic trouble, and I can tell you from a personal perspective the urgency of the situation. Our industry's sales are down 20% right across the province. We have lost about 100,000 jobs, and we're one of the largest employers in the province.

This is not right. We've had 1,400 bankruptcies since 1992. My own business is down and I've been in the industry for 30 years. I've been in the same location for 30 years. The business has been there for over 50 years.

In economic times slowdown is not really there in our industry; usually we speed up. But we're not bouncing back this time. Competition is a lot greater. What we've noticed, just on coming here — all the statistics I have here are great, but in coming here today I have one friend of mine in the industry who's also down in his business and heard I was speaking and came down with a petition that all of us had done a year and a half ago. He photocopied his. I sent mine in and didn't photocopy it, but it was for video lottery machines. He had this petition out for just two hours and got almost 200 signatures for video lottery machines.

Coming here today on my route from beautiful downtown West Fort, where the most friendly people in the world exist, I passed by Happy Time Tours. All their buses are full and have already made two trips to the border, to Grand Portage Casino. Fifteen million dollars a year leaves Thunder Bay. We don't get any taxes or revenue off that because they're not spent in this country; they're spent 35 minutes away.

The Minister of Finance, in his budget of May 8, said the government was going to allow VLTs to help our industry. Specifically, he said, "We believe that VLTS, if implemented within tight regulatory controls and in limited-access environments, can meet a legitimate entertainment demand." Entertainment demand is the industry we're in — to look after people, to entertain them. VLTs are in our entertainment. We need this stimulus; we need these machines to stimulate in our own personal recession we're having.

As we all know, there are a lot of grey machines out there. These grey machines are illegal VLTs. Our government is not making a dime off the revenue from these machines, but they're creating great revenue for people in Montreal who own these machines and have set them out. They're in corner stores, they're in some bars that operate not as well as 95% of us do, they're in bingo halls, they're everywhere. They have to be stopped. We want VLTs so that we can operate them legally, help make the province money and help stimulate our industry.

From the perspective of a businessperson like me, it means that a delay could very well result in having an initiative that the government intended to help the hospitality industry hurt it. The reason is that during the first stage of implementation to racetracks and charity casinos it will create business dislocation. Customers will gravitate to where they can legally play VLTs. We can't afford to lose that business, which may not come back to us. It's an everyday story. If a customer strays to another place, they don't always come back because you've improved. Just because we get VLTs, if they're already somewhere else, we may have lost a ship. While you're implementing them into charity casinos and bingos, you should move quickly to put them into our industry to help us.

Those businesses close to the casinos, such as Windsor, Orillia, Sault Ste Marie and now Niagara Falls, or the new charitable casinos, also need VLTs. The casino in

Windsor, for example, has had a devastating negative impact on the local hospitality industry. Further, VLTs will not negatively impact casinos. Dr Marfels from Dalhousie University in Nova Scotia has proven this in a study that was conducted on an issue in that province.

Delay will also mean, as I said earlier, that the government will be delaying moving on the offensive against illegal machines. It is very difficult to try and operate legally, especially in these tough economic times, when competitors are attracting your customers with illegal machines. We need this unfair competition to stop now.

VLTs work as an attendance generator because they are an acceptable form of entertaining the public wants. They play them for entertainment, not to gamble. They are part of an evening out. Ontario has already a full selection of legal and illegal gambling opportunities. I have already referenced some of the illegal opportunities this measure will help control, but one does not have to go any further than your corner store or bingo hall to find a gambling opportunity. However, just as with the consumption of alcohol, the vast majority of players gamble in moderation and experience no significant gambling problems.

A new brand of alcohol — a new beer, for example — does not increase the overall level of alcoholism. With all the existing forms of gambling today — lotteries, sport pools, bingos, horse racing, casinos, break-open tickets — the introduction of a new brand of gaming, video gaming, will not significantly increase the potential for compulsive or problem gaming in Ontario. Research shows that less than 2% of the population are potential compulsive gamblers, and another 3% to 5% may experience some problems.

I would also like to take this opportunity to point out that the public supports the introduction of VLTs in our establishments. Our customers tell us this continually. The traffic the illegal machines generates at competing locations prove this. Independent surveys conducted by Environics Research and Angus Reid confirm this.

Mr Chairman, on behalf of myself, the employees I still have and those I would love to be able to re-employ, I urge you and your committee to recommend to the government quick passage of Bill 75. I would also suggest that your recommendation include a request to move implementation of VLTs for our industry on to the fast track. Thank you very much.

Mr Kormos: How many VLTs would you want in your establishment?

Mr Donald Johnson: I would probably want up to somewhere between seven and 10, something along the same lines as Alberta and Manitoba.

Mr Kormos: So seven to 10 in your hotel, and your beverage room is a part of the hotel. How much would you expect to generate in revenue, net, to the Wayland Hotel a week with seven to 10 units?

Mr Donald Johnson: I have a brother who lives in Edmonton. He owns a hotel there, in Stony Plain. His seven machines generate approximately \$80,000 a year for him.

Mr Kormos: His take is 80 grand. Do you know what percentage of the gross amount bet is his take?

Mr Donald Johnson: Seven per cent. Do you know how much the government made? Do you know how much that money generated into the deficit?

Mr Kormos: At 7% of the total amount bet, he's grabbing 80 grand, right? That's his take only, at 7%. We don't know what the percentage is going to be for the government. What sort of payout would you expect on a machine in terms of the percentage of the amount bet?

Mr Donald Johnson: What sort of payout?

Mr Kormos: Yes. Down in Portage their pamphlet says, "Payouts of up to 95%" — Grand Portage casino.

Mr Donald Johnson: We would also probably expect the same thing.

1330

Mr Kormos: Because you'd have to be competitive with Grand Portage?

Mr Donald Johnson: Yes.

Mr Kormos: If your machines weren't paying out the same amount on money bet as Grand Portage, you'd still be on a non-competitive base with Grand Portage, right?

Mr Donald Johnson: And the point is?

Mr Kormos: No, I'm asking you because these people have no idea what their payout is. They haven't even considered it. The minister has no idea.

Mr Donald Johnson: I'm sure when they get to the payout-solving part of it, they'll probably agree and come to a situation where we're looking at not just trying to make money for ourselves. But we are in business and that is the meaning of being in business, and \$80,000 is \$80,000 I didn't have to generate back into my business. The number of employees I would employ to look after this would be phenomenal. This summer alone — I usually hire up to 30 people — I haven't hired any students, period.

Mr Kormos: How many people would it take to monitor seven to 10 machines?

Mr Donald Johnson: How many people would it take? Let's face it: You have to count all the money. You have to have people watching the machines. You have to have someone able to fix the machines. You have to be monitoring them. You have to have somebody there who can make the payout.

Mr Kormos: Do you expect to purchase the machines so that they belong to you?

Mr Donald Johnson: From my understanding as to what they do in Alberta, the government puts them in and from there on in you're responsible.

Mr Kormos: Including collecting the money?

Mr Donald Johnson: The government there just takes the amount of money each machine makes. Each time a token or your dollar is put into that machine, it's registered. At the end of that period, the government automatically takes that amount of money out of your bank account set up for that. If it's not there, you're in trouble.

Mr Ron Johnson: Thank you for your presentation. We'll try and get about as far away from Mr Kormos's self-righteous rhetoric and start talking about what this is really all about.

I know that we have to understand, first of all — and it was brought up earlier by one of the previous people who presented to us — that of course gambling is here. It's alive and well in this community already and just 35

miles away. You can imagine, as you so rightly pointed out, the kind of negative impact that's having on your community here, the amount of money that's leaving.

But the argument we're getting from the opposition, and the only one that I'm sensing, quite frankly, which it seems to be repeating over and over again, is the fact that it's an attack by our government on those who are most vulnerable, that we're going to somehow create thousands of crack cocaine VLT addicts out there. Of course that's simply not the case. We heard already from my colleague Mr Young that the majority of people who are sort of predisposed to gambling addiction are not in the lower-income bracket. In fact, they are the upper-income bracket people who are most subjected to that kind of behaviour.

The argument is that by increasing access to gambling activities you therefore will increase the people who are addicted to gaming. That might have validity if we were increasing access to gaming. The bottom line is that gaming exists. I can make a very compelling argument that what we are doing is increasing access to VLTs; there's no question about that. But gaming is alive and well. It's alive and well in bingo, illegal VLTs, lotteries, break-open tickets, charitable casinos, racetracks, Sport Select, my argument being that those who are predisposed to gaming addiction already have the means to act on that predisposition. It's already there. What this is allowing charities and other organizations to capitalize on a new venue, a new type of gaming, that of course is considered entertainment by many people.

My question to you is this. In lieu of the fact that we're sitting here with this argument, which I quite frankly don't buy for one second, is the 2% that we're putting away to help those who do become addicted to gaming and who are already there today as a result of the gaming activities they carry on now, in your estimation, a reasonable effort on behalf of this government to address those needs?

Mr Donald Johnson: Very much. That 2% is probably — they'll have a lot of money left over. Like I said in my argument earlier, when there's a new brand of beer brought on to the market, the alcoholism rate does not go up one iota. By putting in gaming machines, VLTs, your potential gamblers are not going to increase. You already have bingos, charitable casinos, your Sport Selects, your lotteries, lottos. The city is doing it. The city has a committee to open a casino. You're not going to have any more potential for compulsive gamblers.

The Chair: Thank you, Mr Johnson. I'm sorry, Mr Klees, we're out of time.

Mr Crozier: Mr Johnson, you emphasized a couple of times in your presentation that VLTs are just entertainment. As a businessperson, then, what would you say to me if I suggested, well, just put an arcade in your restaurant and then those who are interested in the entertainment of VLTs will come in and play them and that'll give you more business? You'll be able to sell more booze; you'll be able to sell more food. What do you think of that?

Mr Donald Johnson: At this moment in time, I already have those machines. This is another form of entertainment. I have a pool table, I have an air hockey

game, I have a shuffleboard, I have a basketball game. Those are the same things. But I always change them to create better and better entertainment for my customers.

Mr Crozier: So then my point is, why don't you get the latest VLTs with their various kinds of —

Mr Donald Johnson: The illegal ones?

Mr Crozier: No, no. The only thing that makes them —

Mr Donald Johnson: The ones that don't make sense.

Mr Crozier: I suggest the only thing that makes them illegal is if people bet on them. So it's gambling we're talking about, aren't we? We're not talking about entertainment. We're talking about gambling.

Mr Donald Johnson: Gambling is a form of entertainment.

Mr Crozier: But it's one that makes you some money.

Mr Donald Johnson: So is basketball.

Interjections.

Mr Crozier: That's a revelation. But you can bet on basketball.

Mr Donald Johnson: A form that might make me money? My God, let's not think of that. Wouldn't that be awful?

Mr Crozier: We are. Do you realize —

Mr Donald Johnson: A form of machinery that would make the government \$500 million in a year? My God. Without having to put a tax? Let's not do that. That would be insanity.

Mr Crozier: I might be inclined to agree with you, but you also said, Mr Johnson — I just want to get a feeling of how widespread your concern is. We know you're concerned about the government now because you think they should be able to make 70% of what comes in off these things. We know that you're concerned about addiction because you said that 2% is going to leave them money; they're going to have money left over. Addiction is just simply a cost of doing business, isn't it? I mean, the 2% is simply a cost of doing business when you're in the gambling trade, right?

Mr Donald Johnson: Is it illegal to sell alcohol in this province? There is an Addiction Research Foundation. It hasn't gone up a bit.

Mr Crozier: What's your point?

Mr Donald Johnson: Same as your point is about gambling, the 2%. I think that's —

Mr Crozier: You think that's adequate?

Mr Donald Johnson: That's adequate.

Mr Crozier: You don't think it should be 5% or that they should get 10%, just like you're going to get?

Mr Donald Johnson: No. I don't believe that their problem is going to grow.

Mr Crozier: You don't agree then either with the fact that those people who are in the horse racing business think they should get VLTs but you shouldn't?

Mr Donald Johnson: The people in the horse racing industry? I think they should have VLTs, but I also believe that I should have them at the same time.

Mr Crozier: Right. But you understand that they don't think you should.

Mr Flaherty: On a point of order, Mr Chair: That is not what we heard from the Ontario Jockey Club yesterday, and if Mr Crozier is going to put a suggestion to

someone making a representation, I would ask that he do so accurately.

Mr Kormos: We heard it from a number of sources.

Mr Flaherty: We did not hear it from the Ontario Jockey Club, we did not hear it from the harness —

Mr Crozier: Do you want to start to debate the point of order?

The Chair: No. That's not a proper point of order.

Mr Flaherty: I'll tell you exactly what they said and I'll be accurate about it. I wish you would be too.

Mr Kormos: You touched a nerve.

Mr Crozier: I wish that you would keep quiet when I have the floor.

Mr Flaherty: I will if you would be accurate and show respect for the people who come before the committee.

Mr Crozier: Chair, if you're going to let this go on, let the questioning go on. These guys sit there —

The Chair: Your time, Mr Crozier —

Mr Crozier: You talked about us and I kept quiet.

The Chair: Mr Crozier, your time had elapsed in any event.

Mr Crozier: It's about time somebody called a spade a spade, Mr Chair.

The Chair: The point is taken, Mr Crozier, thank you. Mr Johnson, thank you very much.

Mr Donald Johnson: Thank you very much for having me.

BEST OF LUCK BINGO ASSOCIATION

The Chair: Our next presenter is the Best of Luck Bingo Association and the Metro Lions Club, Mr Phil Jarvis.

Mr Phil Jarvis: First of all, I'd like to take the opportunity to thank the committee for hearing me out. The Best of Luck Bingo Association was formed some two and a half years ago and is a loose-knit group of organizations whose main purpose and only purpose is to raise revenue for the local 16 or 17 charities involved in this organization. All revenues generated to this association are raised through bingo proceeds and revenues through break-open tickets. Break-open tickets are located in a variety of local liquor dispensing establishments, corner stores, service stations etc to be found throughout the municipality. I, as are many other volunteers, am involved in the bingo activities and obtaining break-open ticket sites to meet the needs of the charities involved.

Many local retailers of liquor and otherwise have been very supportive in our participating charities, so their interest in obtaining VLTs we can very much appreciate business-wise, and we could if the pending structure of revenue distribution to the charities was likewise laid out. But here we have a concern that we're going to address later on.

The government itself, I believe, has doubts in permitting this type of gambling to develop in Ontario. The consumer minister, Norman Sterling, seems to excuse the government moving into this field in his quote that the video cat is already out of the bag, so I guess I might excuse by allowing the other nine cats out of the bag at the same time.

1340

This act is in light of the fact that provinces like Alberta and Manitoba are asking for caps on VLT exposure and expressing a decreasing desire, to limit its exposure.

The effects of VLTs in a community will be felt in many ways. It can be easily anticipated that licensing fees from VLTs will decrease by about 50%, while fees set by the board of directors of the commission, will they be partially returned to the municipality or might we face a double fee structure, municipal, provincial, and perhaps a vending permit concept?

There is no actual measure of dollars removed from the community each year by each VLT directly to the government. Now these charitable dollars remain and are recirculated in the community through the organizations receiving them, thus creating a business infrastructure.

We do not have at our disposal an actual description or information on how this new gaming system will affect the local distribution of gaming supplies. Is it possible gaming supplies will be distributed through a central agency similar to the LCBO, notably the Ontario Lottery Corp, which seems to be the reverse of this government's move toward privatization? However, if it does mean the privatization of gambling, and there is some suggestion that it does if one looks at Bill 75, the very inclusion of gaming in an act to regulate alcohol does suggest that this might indeed achieve a common ending. Does this mean that the Ontario Lottery Corp inherits a monopoly on gaming in Ontario similar to that of the LCBO's structure in the past and whatever it will take in the future?

How much opportunity will a small association like ourselves have in out-marketing the likes of the Ontario Lottery Corp, even if we are allowed to try? What effect will this have on the fund-raising efforts in this community?

One might be even more concerned about another aspect of this bill. How does one access the government's revenues from VLTs? First of all, there seems to be in the bill no process for this to take place, and indeed the minister's statement seems to verify this when he says he would like to hold public hearings to decide which charities should benefit most from the bonanza. Thus, one must recognize there is public confusion and concern over accessibility.

This same situation seemed to prevail in Alberta prior to the implementation in that province, and it's hard to show funds returning to charities, my best guess being that all revenues flowed into central revenue. One would hope that doesn't happen in Ontario.

Again, what does this mean? The 1996 budget figures indicated that 10% of revenue is to go to the host site and 10% to charities. What does "charities" mean, and to be determined by whom: myself or the applicant to the host site? Are charities to be determined by the Ontario Lottery Corp or the government in some other form? I ask, how does my organization participate at this time?

In addition, I see no guidelines nor have I been able to obtain any as to the disposition of these funds. Again, once you have applied for these funds, will they be allowed only for capital projects or will we be able to access them for operating funds, like local museums or

kids' camps, as revenues from gaming activities are allowed now?

I see the extension of the use of VLTs creating the following situations:

It will lead to a decrease in volunteers in the community working for the good of the community.

It will draw funds from existing like gaming programs to the government, and it will be the government board's decision as to who gets the funding charity sections.

It will create another level of government.

Who is to establish the policing effect? Will it be the host site or will it be the government agency? And do we want the fox-in-the-henhouse concept in policing?

Will it have a substantial effect on the gaming business supply, as mentioned, if the Ontario Lottery Corp becomes the supplier of gaming material through the shelving and supply control, as the LCBO has become the supplier and controller in the privatization of liquor distribution?

It will lead to a substantial decrease in revenues to municipalities, especially the smaller ones. As one sees in this report, there's no way of compensating for this. The *Globe and Mail*, a mildly small-c conservative newspaper, reports that a government investment of \$6,000 will generate between \$20,000 and \$35,000 revenue from each machine, which will undoubtedly put remarkable stress on the charity revenues in this particular community.

Lastly, this representation does not comment on the vices of the community, each individual, rich or poor, whether he plays bingo, attends gambling casinos or acquires needless big toys. As Sterling comments, the government can do only so much to control human behaviour, but does it have to insist on expanding the behaviour many provinces deem undesirable in our struggle to put a bell on the VLT cat that's already out of the bag?

As a volunteer, I find it difficult to believe that any government of any persuasion would want to discourage volunteers from being active in local organizations by raising revenues through simple games of chance. This alone reduces commitment of the individual to his community and places greater responsibility on future government agencies. Government readily seems to admit this responsibility when it places a percentage to cure problems created by the actions that it takes.

Again, I take this opportunity to thank the table for hearing one volunteer hack from the community.

The Chair: Thank you very much, Mr Jarvis. Mr Flaherty, three minutes.

Mr Flaherty: Thank you, sir, for your presentation. You appreciate that right now we have 15,000 to 25,000 illegal, so-called grey video lottery machines in the province of Ontario and that the charities of Ontario are getting absolutely nothing from those machines?

Mr Jarvis: I'm aware of that.

1350

Mr Flaherty: As a volunteer, a number of the issues you've raised go to the implementation issue. This is Bill 75, which is enabling legislation.

Mr Jarvis: I realize that also.

Mr Flaherty: I appreciate your comments with respect to the issues about charities and how does one define

charities and how does one allocate money between charities and those issues, which are very important and which will be the subject of consultations by our government as this matter progresses. I don't want you to think I'm avoiding discussing that with you; it's just not specifically part of the enabling legislation, which is Bill 75. But the government has committed to further consultations, of course, about those important matters.

I would mention to you, though, given your commitment as a volunteer and to charities, that the current three-day roaming Monte Carlo nights are producing about \$10 million to \$15 million per year for charities now and that the estimate here is that with the permanent charity gaming halls, this will increase 10 times, so the charities of the province of Ontario will have 10 times as much money from those sources. I'm sure you'll agree with me, as a fellow volunteer at bingos and other, different things, that's a remarkable plus factor.

Mr Jarvis: I would agree with that if the process is in place for accessing those particular dollars and if that is guaranteed in the processing or if that is made accessible to us in the processing.

Mr Flaherty: I appreciate your concerns.

Mr Klees: If I might, just to follow up on Mr Flaherty's comments, Mr Jarvis, you've raised a number of very important questions. We want to thank you for raising the points and putting them as questions; the purpose of this process is to get that kind of input because we also want to be sure that when this is implemented we do it the right way. It's through this process that we're able to get the kind of feedback we need from people like you so that we can do this right.

The bill we're talking about here today, as Mr Flaherty said, is enabling legislation. It provides a framework. It doesn't deal at all with the implementation. There are no guidelines yet, and there shouldn't be, because there won't be until we have had a chance to do some very broad consultation. This is very much part of that consultation. So again I thank you. Your comments will be taken into consideration as we draft those guidelines, and that consultation will continue to take place over the next number of months.

The Chair: Thank you, Mr Klees.

Mr Jarvis: Can I redress that for a minute, please?

The Chair: I'm sorry, we have to move to the next caucus, sir.

Mr Gravelle: Mr Jarvis, thank you very much for appearing. I think I just heard Mr Klees say there would be a commitment to further consultation once the bill is passed in terms of the implementation. I'm pleased to hear that commitment in terms of how the process will carry on beyond that. That's great.

Mr Guzzo: It will be up to the local member, won't it?

Mr Gravelle: The local member will be very happy to be a part of that process and to initiate it, for that matter.

Mr Jarvis, you did make a number of points that are absolutely valid, and some of them do seem almost ironic in the sense of the government on the one hand encouraging, if not emphasizing, the need for voluntarism and on the other hand setting up a system that will make it

probably more difficult and less likely for volunteers to be able to be involved in the process of fund-raising.

The concern I have, and I think you were addressing it in general too, is that no matter what is said here and what has just been said, it would make an enormous amount of sense to actually understand more about the implication of this bill in a variety of areas before it reaches the stage it's reached right now; in other words, an impact study of some form and a serious study in terms of how the implementation would go through so that groups that are charitable organizations and rely on them do not need to come here and have the confusion that obviously is in place now. Would you agree that it would have been useful if the government had taken that approach?

Mr Jarvis: As a member of this association and of the general public, there is confusion as to how the process is going to work. That is the question which is on the mind. I'm not here to speak against VLTs; I'm here to speak against how the VLT processing is going to work. I realize there will be what we call enabling bills passed after, but at this particular stage the question that's in the minds of the people is how this bill is going to affect the very people who are on the ground now. That's the answer I wanted to reply to the previous gentleman.

Mr Kormos: Mr Jarvis, you're here on behalf of, among others, the Metro Lions Club, and I suspect that you folks up here, as they do in other parts of the province, do all sorts of fund-raising for any number of commitments that the Lions Club makes regionally and provincially and nationally and internationally on a regular basis.

A lot of people have told me that in the recent past, or not-so-recent past, it has become increasingly difficult, that the cash simply isn't out there. If you're doing a lottery or a raffle it's harder to push the tickets. People don't have the same surplus cash that they did, and fund-raising has become more and more difficult, notwithstanding anything else that's happening. Is that a fair assessment?

Mr Jarvis: That is my assessment. That would be my assessment also, but the question I have asked is, where are the guidelines, where is the enabling legislation to show a comfort level to me in how I obtain those funds from charities? I don't see that yet.

Mr Kormos: Those guidelines aren't there. You're quite right. What I'm getting to, though, is that my calculation, on 20,000 slots for the population of the province of Ontario, is one slot for every 550 population approximately. That would put 240 slots into the city of Thunder Bay alone.

Mr Jarvis: That's right.

Mr Kormos: I listened to Mr Johnson, and he uses the Alberta model. A 7% return on seven to 10 of those would be around \$80,000 a year. That would be the establishment's take. You're talking about hundreds of thousands — no, millions of dollars being pumped into these slots by Thunder Bay residents and passers-through, tourists. I'm worried about the fact that we've got people out there whose pockets are pretty bare as it is. I know what it's like to have to hit people up to buy a \$1 raffle ticket or make a contribution to this event or that event.

Mr Guzzo: Leadership campaigns.

Mr Kormos: No, I never did any fund-raising for that, as a matter of fact, Mr Guzzo. I didn't do any fund-raising at all.

I know what it's like to have to do that and I know how it's become increasingly difficult in tough times. I wonder what it's going to be like in a community where 240 slot machines are going to take in literally millions of dollars of what were loonies, toonies and quarters in people's pockets, things they otherwise might have spent in buying raffle tickets or making contributions. Is that a perspective on this issue?

Mr Guzzo: Tell him how many are here now. Tell him how many illegal ones are here now.

Mr Jarvis: I don't know the answer to that question. Since there have been no legal charges laid in that respect, legally I suppose the response is zero, but rest assured that there are probably 40 to 50 in the community somewhere.

But to further a discrepancy here, we have municipal — I'm not too sure if I can go provincially on this — legislation that permits me only to have one BOT site in the municipality, and that's as a charity, which is a very soft type of gaming.

Mr Kormos: It's on the break-opens.

Mr Jarvis: On the break-opens.

Mr Kormos: That's right, and the government is saying that because they say the market isn't out there. Isn't that the reason they give you? That's what the Ministry of Consumer and Commercial Relations says.

Mr Guzzo: That was under the old administration.

Mr Jarvis: As I say, these are only comments from a community hack. Thanks a lot.

The Chair: I wouldn't call you a hack. You obviously have spent a lot of time in volunteer work and you are to be congratulated.

Mr Jarvis: That I've heard too.

1400

PERSONS UNITED FOR SELF-HELP IN NORTHWESTERN ONTARIO

The Chair: Our next presenter is Persons United for Self-Help in Northwestern Ontario, PUSH, Ms Marilyn Warf. Good afternoon. You have 20 minutes for your presentation, which includes any questions. I ask you to proceed.

Ms Marilyn Warf: Thank you very much for the opportunity to address this committee. My name is Marilyn Warf and I'm the regional director.

Persons United for Self-Help in Northwestern Ontario, or PUSH Northwest, through its regional resource centre in Thunder Bay, provides information and referral, regional consultations and advocacy on disability issues, resources for persons with a disability to enable them to work towards self-empowerment, control and responsibility for decisions in their own lives, skills development and leadership training for consumers, and assistance with community development in northwestern Ontario and the Nishnawbe-Aski Nation. PUSH Northwest has a regional consumer network at the grass-roots level through the Disabled Alliance Network groups in most communities

in our geographic area, which represents three quarters of the size of the province. Our organization raises 48% of its own operating dollars through various fund-raising events, the largest of which are bingo and break-open tickets in Thunder Bay and break-open tickets in Manitouwadge.

There are two areas of concern regarding the introduction of VLT gambling. The first is the loss of revenue to community-based groups and organizations from bingo and the sale of break-open tickets due to VLTs and the second is the social impact from this type of gambling.

The revenue from bingo and break-open tickets supports charities as well as a variety of community, school and athletic organizations. At the hall where we hold biweekly bingos, charities range from large provincial ones to smaller regional ones like PUSH Northwest. Non-profit organizations without charitable status include women's, men's and minor hockey, parent-teacher associations, a judo club, a speed-skating club, nordic skiing, high school basketball, a volunteer fire department and an ethnic society. In Thunder Bay there are 160 organizations that have break-open ticket licences and 100 organizations that have licences for bingo. The proceeds from bingo and break-open tickets sustain the existence of these organizations.

In provinces that have introduced VLTs there was a steady decline in the revenue generated from bingo and break-open tickets until a time when both of these types of fund-raising activities all but disappeared. This has also been the trend in the United States after the introduction of VLTs. Acknowledging the fact that there is only so much money to be spent on gaming, the introduction of more types of gambling only spreads the dollars thinner. The current system of fund-raising through bingo and break-open tickets means that organizations that do the work earn the money. Will this be the case with the provincially run VLTs?

What will be the method of selection as to which charities operate in the permanent casinos? Will the charities currently earning substantial dollars from bingo and break-open tickets be able to access this same kind of revenue from VLT proceeds? Will charities that currently do business with casinos have priority or will all charities have equal access to the permanent casinos that introduce VLTs? Will revenue ceilings and/or time limits be placed on charities at each permanent casino so that a greater number of charities can access the proceeds? What criteria will be used for the distribution of the proceeds? Where are the written criteria for this system? Will distribution be done from Toronto and be limited to those charities that are able to put forth the biggest sell job or to those charities that are older and better known? Newer charities like PUSH Northwest located in Thunder Bay and many smaller regional communities will be hard-pressed to challenge for the provincial pot of VLT money against the rest of the province. Will consumer advocacy have a profile against the Canadian Cancer Society or the Heart and Stroke Foundation of Ontario or the United Way?

We have worked long and hard for our financial stability and we are in real danger of losing everything because the provincial government is looking only at a

new form of income and not at the complexities which accompany the introduction of VLTs.

The provincial and municipal governments do not fund community or school sports, recreation, entertainment, school playground equipment, services or advocacy for persons with a disability, St John Ambulance or volunteer fire departments etc to the extent necessary for their existence. The quality of life for children, adults and the community provided by these organizations will be lost with the reduction of revenue from bingo and break-open tickets after the introduction of VLTs. Many of these groups and organizations are not registered charities and will not be eligible for proceeds from VLTs. Are the MPPs prepared to vote for Bill 75 at the expense of children's hockey or soccer or a volunteer fire department?

Is this the type of negative community impact that the government is sanctioning? Why would the government support Bill 75 knowing that it will eliminate many organizations that are currently helping themselves? Is the motive of Bill 75 new money at any expense? The government does not have the right to break down the fibre of our communities by forcing organizations to close that have been financially self-sufficient. It is guaranteed that the provincial and municipal governments are not going to assume the cost of operating these services or sports teams when they can no longer generate operating funds from bingo and break-open tickets or access VLT funds.

How can we be assured that the proceeds from VLTs will be returned to the community? The Alberta government promised to return the proceeds of the VLT operation to charities and has not given any money back in the last two years. In New Brunswick, the government also promised to share the profits with charities but the only money given back to the people of the province that I could find reference to was in the form of opening expanded services for persons with gambling addictions, as well as a 1-800 help line which was staffed by addiction counsellors. This overwhelming need for addiction counselling and rehabilitation was only evident after the introduction of VLTs.

Horror stories abound in provinces that run VLTs about the loss of homes, jobs, families and lives due to the individuals' gambling debts incurred after the introduction of VLTs.

In an August 6, 1996 article in the *Chronicle-Journal* by the Canadian Press, Consumer Minister Norm Sterling stated, "I have qualms about all of gaming, I have qualms about the use of alcohol, I have qualms about triple X videos. You can only do so much to control the actions of your people."

How can the Ontario government be looking at introducing VLTs which are determined by the experts to be the most addictive form of gambling and called gambling's crack cocaine? At this time when the economy is faltering and unemployment is escalating, people are very vulnerable to a get-rich-quick scheme such as VLTs offer.

The government proposal to introduce VLTs at race-tracks may have the least added social or community impact due to the fact that the new machines will prob-

ably be used by those who already frequent the track and not entice a new target group to this type of gambling.

Prior to introducing VLTs in 50 permanent charity casinos, there must be more examination of potential social and community-group impact and written criteria as previously mentioned. After the 50, will there be 50 more? Perhaps the introduction of VLTs in only three to five major casinos would be more appropriate. VLTs in casinos in all communities will limit the number of charities that can access funds and eliminate the non-profit groups from accessing funds in their own community.

The hospitality industry will pressure the provincial and municipal governments to adopt the widespread introduction of VLTs in licensed establishments as a means of increasing their potential for revenue. Again, this will take away most local organizations' ability to be self-sufficient through community fund-raising.

The Ontario government needs to take lessons from the provinces and states that have widespread use of VLTs. They are dealing with increased social problems, and many community groups, services and events have disappeared. The government is proposing to release an animal and they don't know what colour it is, how big it will grow, what it will eat or what its potential is for destruction.

When VLTs were introduced in licensed establishments in New Brunswick there was great concern over the fact that alcohol was being consumed in greater quantities by the gamblers. Therefore the VLTs were moved to corner stores. On one side of the VLT is an instant cash machine and on the other is the 1-800 number for counselling services for gambling addictions. Now in New Brunswick instead of a bar scene for gambling, what you commonly see is a parent or person responsible for child care gambling in the corner store while the children play on the floor. Who will determine the impact of learned behaviour on these children?

Playing bingo and purchasing break-open tickets are gambling, but the average spent over the last three years as recorded on our gambling reports is between \$20 and \$23 per night per player. Statistics from Gambling and Problem Gambling in Alberta, November 1994, show that "problem gamblers also spend more money on average per month gambling on VLTs and they were also more likely to have spent large amounts (eg \$100 to \$999) gambling in one day." The same report states that early data — that's from June, July and August 1994 — from calls received on the province-wide problem gambling help line indicate that 60% of the calls related to a concern with VLTs. Considering that VLTs are a relatively new form of gambling, these statistics are alarming.

1410

Has the government done its homework by looking at other provinces and states that have introduced VLTs? The money spent on VLTs is not from those who are wealthy and are contributing voluntary dollars through gambling. Statistics from the Alberta Alcohol and Drug Abuse Commission, November 1994, profile a typical person who gambles on VLTs: somewhat more likely to be male, more likely to be under the age of 25, more likely to be single, somewhat more likely to have a yearly

income of less than \$15,000, significantly more likely to have a high school education or less and more likely to be unemployed. Is this really the target group that you want contributing to this new revenue scheme? We are not our brother's keeper, but it would be totally irresponsible of the government to put the tools of destruction into people's hands in the name of deficit reduction.

Has the government taken the time to evaluate the negative social impact from the introduction of VLTs? Does the government really anticipate that the increased revenue will offset the cost of related health and social issues? It seems as though the government is setting out to make money but has not fully developed a business plan.

Our recommendations are that the full impact to the community groups as well as the social impact be investigated thoroughly before any introduction of VLTs is made; that provincial policy and strategy be developed so that all groups and organizations have an equal opportunity to earn operating dollars through all types of gaming; that the government slow its headlong rush into the introduction of VLTs until the first two recommendations are completed.

We realize that the government is very anxious to create new means of generating revenue to offset the provincial deficit, but the hasty introduction of VLTs without weighing the complex repercussions associated with this type of gambling may leave this government a legacy it will not be proud of.

Thank you for the opportunity to present our perspective.

The Chair: The opposition.

Mr Gravelle: Good afternoon, Marilyn. Thank you very much for your truly excellent brief, because I think it touches on a lot of issues that have been mentioned by previous groups and, in the specific sense, the concern by various organizations and non-profit groups, particularly drawing reference to the non-profit groups that don't have charitable status, and having absolutely no sense as to what relationship they'll have in terms of being part of the benefits is an important point to make. I know you can probably go on and on in terms of all the groups. I think we're all aware of that in every community in Ontario, but certainly in Thunder Bay as well.

It seems to me that your recommendations that you make at the end make a great deal of sense. The government has clearly gone ahead with the desire that they want to have this go through so they can put themselves in a position to gather the revenue without clearly studying the full impact of what it's going to mean, certainly in terms of the social impact and the consequences of that, and as you point out in your brief as well, the fact that charitable organizations and various groups are very concerned that they're going to be left out in the cold, which could be a devastating situation for all of them. So I just want to tell you that I agree with that and ask you to even amplify on it in any way you can in terms of what the government should be doing.

Ms Warf: There are two things that I've heard during the presentations and one is the acknowledgement that there are illegal VLTs out there. "Oh, well, let's legalize VLTs and it will clean up the problem." Why don't we

clean up the illegal VLTs out there and take the time to properly plan? If I presented a plan to any funder or development corporation and I didn't have a proper business plan, nobody would fund it. The government needs to take the time, do the research, find out what the impact is for the introduction of things like VLTs.

It is a monster and you don't even know what you've got. You can't implement something like that and say, "Let's put the guidelines in there after it's out there growing." You don't know what you've got out there growing. Take the time to find out what you're planning to introduce and develop a very comprehensive plan around the introduction of it. Introduce it in the race-tracks like you've proposed, fine; introduce it in your major casinos like Windsor and Rama, fine, if that's what you want to do. But don't destroy communities and community organizations because you don't know what's going to happen after it's introduced. It's going to be too late.

The Chair: Thank you, Mr Gravelle. If we may move on to Mr Kormos. I'm sorry to interrupt you.

Mr Kormos: Ms Warf, again, I think you raise important issues and, quite frankly, I'm sure members of the opposition will be referring to this when we debate this further in committee and in the House. I do want to tell you a true story, and in the context of what's happening right now it might be of more interest. That was back, as you recall, in the spring of 1995, when an election was clearly in the air. Niagara Falls was anxious, because it still hadn't been made a casino city. Windsor had, and Niagara Falls was anxious. The mayor of Niagara Falls, knowing, as most people did, that the New Democrats weren't going to be re-elected, called Lyn McLeod and asked Lyn McLeod — and this is true — if she were committed to a casino in Niagara Falls or Niagara region. Lyn McLeod said, "Quite frankly, yes." The mayor of Niagara Falls then called Mike Harris, the leader of the Conservative Party, and similarly canvassed Mike Harris. Mike Harris said no, that his wasn't going to be that type of government. Wayne Thomson —

Mr Young: No, he said if there was a referendum.

Mr Kormos: — in one of the most regrettable occasions in his life —

Ms Warf: I'm sorry, I can't hear Mr Kormos.

Mr Kormos: Wayne Thomson, the mayor, in one of the most regrettable occasions of his life, said, "I don't care what you say, because you're not going to be the next Premier anyway." Wayne Thomson clearly spoke to Mike Harris in those terms and, as I say, regretted it come June 1996. As it was, Mike Harris clearly forgave him and announced the casino in Niagara Falls.

Here you have Mike Harris in May 1993 saying in the Legislature, "As Donald Trump says, 'Gaming doesn't come cheap.' I have to agree with a lot of the critics on that. It brings crime, it brings prostitution, it brings a lot of the things that maybe areas didn't have before. There is a big cost to pay." That's May 1993, and here we are a few months after May in 1996 and we not only have the casinos — I acknowledge, they were established by the former government and expanded upon by this government, but we've got 20,000 slot machines in every part of Ontario but casinos. That's what Bill 75 stands for.

The Chair: Thank you very much, Mr Kormos. We have two minutes for Mr Hudak and Mr Ford.

Mr Douglas B. Ford (Etobicoke-Humber): Mrs Warf, here's a little memorandum here, source, the LaFleur World Gambling Abstract, third edition, gambling revenues, Alberta:

"Although it is always difficult to determine the cause and effect, it would appear that the decline in charitable pull-tab revenues which began in 1991 closely mirrors the dramatic increase in revenues from charitable casino nights and has little to do with the introduction of VLTs, which did not occur until August 1992, eight months after the major decline. A decline in pull-tabs mirrors a dramatic rise in charity casinos."

These are facts. So to clarify some of the misunderstanding that goes on —

Ms Warf: I think you could find facts that would support what I'm saying and you can find facts that would refute what I'm saying. What I'm asking you to do is take all of those facts —

Mr Ford: This is a study of actual facts of revenues coming in, dollars coming in; dollars coming out. These are facts. You can't change them.

Ms Warf: It still doesn't eliminate the fact that you're going to kill small sports organizations and hockey clubs and stuff, because we're still only talking about charities able to access it. Is there a way that you can look at introducing these VLTs in a manner which limits them somehow in their scope so that you still can have access to community groups to be self-sufficient and buy the hockey uniforms and the soccer uniforms? You don't want to do one thing at the expense of something that's a community-based enrichment-quality-of-life issue like kids' hockey teams and sports clubs. That just doesn't make sense to me as a mother or a member of this community.

Mr Ford: This government is not debasing those facts.

Ms Warf: But it doesn't look like you've done your homework. I think you're running too fast into putting them in and then saying: "We'll look at what's going to happen. We'll see the fallout after."

Mr Ford: We're not even at that stage yet.

The Chair: Thank you, Mr Ford. I'm sorry, Mr Hudak, we do not have — Ms Warf, thank you very much for your presentation here today.

Mr Klees: Mr Chairman, I wonder if in the interests of clarification I might just make a very brief statement, because I think it is important that people who are —

The Chair: There is no provision in the subcommittee direction to me for statements.

Mr Klees: Could I have unanimous consent of this committee, then —

The Chair: That's a different matter.

Mr Klees: — that I might take about 60 seconds to make a clarification?

The Chair: Is there any objection to that suggestion? Sixty seconds.

Mr Kormos: The godfather needs a spokesperson. Let the spokesperson for the don speak.

The Chair: Mr Klees, you have unanimous consent.

Mr Klees: Thank you to my colleagues. I think it's important for those people who have come and taken the

time to be before this committee that it's understood that the government has absolutely no intention of implementing VLTs until the guidelines are in place, until all of the research has been done. What this committee is doing is simply considering Bill 75, which provides enabling legislation. The implementation is not yet scheduled and will not be scheduled until all of the facts that — for example, the previous witness brought forward and asked us to consider. I think it's important that the people of this province are under no misconceptions on that point.

Mr Kormos: You've already requested bids on the slots.

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THUNDER BAY AND DISTRICT HOSPITALITY ASSOCIATION

The Chair: Our next presenter is the Thunder Bay and District Hospitality Association, Mr Mike Meady.

Mr Mike Meady: Howdy.

The Chair: Hello there. You have 20 minutes, Mr Meady, if you'd proceed.

Mr Meady: Mr Chairman, members of the committee, my name is Mike Meady. I'm the past president of the Thunder Bay and District Hospitality Association.

Let me begin by congratulating the government for its commitment to introduce video lottery terminals in the province and specifically to our industry. It's interesting to note the misinformation being put forth by some to discredit the government on this issue and as a means to promote their own interests.

Ontario's hospitality industry is one of the province's larger and important industries. Unfortunately, the recession has hit us, with sales down 20% and no real turnaround in sight.

Collectively we directly employ 232,000 people, with another 85,000 employees indirectly, for a total of 357,000. That represents a decrease of more than 90,000 from pre-recession days. Our total sales are \$10 billion annually, which equates to 3.8% of the province's GDP. We are also an important component of Ontario's tourism sector, which accounts for more than \$3 billion to Ontario annually, and a major purchaser of Ontario's agricultural products and a primary source of off-farm income in rural Ontario.

As I indicated earlier, the recession has hit the industry very hard and shows no signs of easing up. Bankruptcies continue very high and continue to threaten jobs. Since 1992 there have been more than 1,400. Many businesses continue to struggle to survive, costs continue to escalate, with revenues still on the decline. However, on May 8 the government gave them all a hope for a better day ahead: video lottery terminals.

I'm here today not only to ask support for the commitment made by the Minister of Finance on May 8, but to also ask the government to commence implementation as soon as possible. I'm here today to put forward the facts on the information on VLTs, and not misinformation that I have seen and heard recently.

First off, the government really isn't introducing VLTs into the province; they're already here. In fact, just outside of this hotel property you could drive five

minutes off the main road in either direction and I could clearly show you some illegal grey machines. That's just this community alone. According to Ontario Provincial Police estimates, the numbers range from a low of 15,000 to 20,000. These illegal grey machines are costing the government approximately \$400 million annually in new non-tax revenue. Furthermore, by ignoring their presence, some businesses are forced to operate illegally just to try and remain competitive.

VLTs are an acceptable form of adult entertainment. They are not an insidious gaming device, nor more addictive than any other form of gaming available in Ontario now, as some of you will have me believe. Moreover, two thirds of Ontarians want them in adult licensed bars and restaurants, according to surveys.

Studies conducted by Brandon University, which I believe you have copies of now, indicate that video lottery players see video gaming as part of an evening's entertainment. It is a planned part of going out and hence a part of their budget planning process. VLT players do so one to two times per week and spend on average about \$10. Dr Barbara Gfeller from Brandon University, who conducted the study, found that most people who played VLTs did so to socialize, not to gamble, and that it is viewed as a recreational activity. I draw your attention to the excerpts, as I said, that were handed out earlier.

I would also like to commend the government on its forethought of dedicating funds towards development of programs for those with gaming problems. There are in the marketplace today many forms of gaming. VLTs are, it should be noted, according to research, not any more addictive than any other forms, than horse racing, bingos or casinos. The data indicated that a small component of the population is susceptible to compulsive gaming. Compulsive gambling, like compulsive drinking, is not a cumulative problem which grows with the introduction of new brands or types. Gamblers transfer their attention from one form of gaming to another. For example, horse racing revenues have declined substantially from the days when they were the only legal game in town.

Tibor Barsony, the executive director of the Canadian Foundation on Compulsive Gambling, has said: "Prohibition is not the answer. Education and treatment are."

Dr Durand Jacobs, vice-president of the US National Council on Problem Gambling, said when he was here in Canada: "The majority of the population has no problem with gambling. For most folks, gambling is just fun and games, but for a small minority who have a problem it can be devastating, and we have to develop programs to help them."

It is interesting to note that research shows that less than 2% of the population, as has been stated earlier, exhibits the potential to become problem compulsive gamblers. This compares to 6% for alcohol use. However, we recognize that for some, no matter what the product, a problem can develop, and we commend the government in recognizing the fact and moving forward on it.

Despite what you may have heard or been led to believe, the introduction of VLTs in other provinces has proven to be a job creator, a major stimulus to the industry. Only in Nova Scotia, where originally they were allowed in corner stores — where, I may add, the grey

machines locally five minutes in either direction are located — I lost my point. Now that they are only in restricted locations, as per Bill 75, we are not aware of any problems, contrary to what some may want you to believe. I also should point out that VLTs and the casinos in Nova Scotia are coexisting quite well. A study conducted by Professor Marfels at Dalhousie has concluded no negative impacts.

There are two different audiences: one, destination, the other, a drop-in. Based on the experience in those other provinces, VLTs will create thousands of new jobs in Ontario's hospitality industry, as well as providing a new source of funds for the industry and the government.

In Manitoba, for example, the introduction of VLTs resulted in the creation of almost one full-time and one part-time job per business location. Overlay those numbers into Ontario and you're looking at well over 10,000 jobs. These, it should be noted, are direct jobs.

Prior to the introduction of VLTs in Manitoba, the Manitoba Hotel Association reported that its members were going bankrupt at an average rate of 14 per year; with the introduction of VLTs, that number has dropped to two per year, a drop of over 85%. A recent survey conducted by the association revealed that 65% of its members credited VLTs as playing a crucial role in averting financial disaster. Another positive spinoff is that the local economy, as it relates to the purchase of capital improvements, construction projects and the purchase of goods and services relative to the operation of VLTs, resulted in a boost to the local economy. Each operator spent, on average, \$20,000 to install these machines. That figure translates well into \$100 million in capital expenditures all across this province.

In terms of an implementation schedule, we urge and recommend that the government move forward on getting the hospitality industry on line as soon as possible. The minister said on May 8 in the budget that VLTs were being introduced to help stimulate the hospitality industry. This measure is clearly intended to help the industry, but any undue delay could in fact exacerbate the shift in business that will accrue to those who will receive the VLTs in early implementation schedule. This will make an already serious economic situation even more urgent. It will also delay the fight against the illegal grey machine market, including bringing the \$400 million-plus of new non-tax revenue into the government's accounts.

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VLTs are important to our industry for a number of reasons. Obviously, they provide an important new source of revenue for business. The proposed 10% commission fee is low in comparison to other jurisdictions, averaging 16% to 30%, but one we can live with. Because VLTs are viewed in the public as a desirable form of entertainment, they increase the traffic flow, they bring in customers. Customers eat and drink, which creates more economic activity. The byproduct of this new activity is our agricultural sector, as our industry is one of the largest purchasers of Ontario farm products, as well as off-farm employment.

It's also important to comment on the supposed impact on charitable gaming. Contrary to what you might have been told, VLTs have not had a negative impact on

charitable gaming. For example, in Alberta the drop in charitable gaming occurred, as was previously mentioned, with the introduction of casinos, over one and one half years before VLTs were introduced into that province. The numbers in every province indicate no negative impact.

VLTs will help save our industry. I might note that our industry has a wonderful image of looking very prestigious and very rich to the public eye. As you walk into most of the hotels or restaurants or well-established places, you see gorgeous, well-polished lobbies and grand chandeliers, as we have in this room today, but if you look behind the scenes at the realistic numbers of the bankruptcies and the financing that's going on with banks — since 1983, as was quoted by the president of the Hotel Association of Canada, 85% of properties opened are either being run by the banks now or are in full bankruptcy. But we appear to look very rich, that we have this little vault of money that we just roll around in afterwards behind the scenes, but really it's not the case.

This is the clear loud voice of myself and my peers from all across the province. The facts support this belief. I and my peers are licensed as proven, responsible professionals, trained thoroughly and familiar with all the results from the operations and activities for adults, including the liability. A healthier hospitality sector, through VLTs, means a healthier local economy. A strong, vibrant business reinvests in business, hires more people, purchases more goods and services, sponsors local charitable and sporting events and pays taxes.

Before closing, I'd like to comment on a number of other aspects contained in Bill 75. Combining the Liquor Licence Board of Ontario and the Ontario Gaming Commission into the Alcohol and Gaming Commission of Ontario appears to be a logical move. Combining their operations should not only provide efficiencies but it should also mean less confusion arising over the regulatory enforcement side once the hospitality industry begins to operate VLTs. It should assist the government in dealing with illegal grey machines.

I would also like to ensure that bad operators are not allowed the privilege of a licence. The provision to revoke a licence to a problem location on the outlined grounds of prostitution, drugs, illegal gaming or physical threats to persons is well-meaning and good, but before any final action is taken, it should require a public hearing to protect the rights of the owners. Interpretation is subjective, and we need to ensure that fairness to all parties is maintained.

We commend the government for taking this initiative. It will stimulate our industry without government funding. It will — and I truly believe this — eradicate at least the majority of the illegal machines from our province and bring untaxed revenues into the mainstream economy and, in the process, help the government reduce the deficit. Thank you.

Mr Kormos: I appreciate your comments. The Ontario hospitality association has addressed this in Toronto, with much of the same text, on a couple of occasions. That's fair enough; that happens in every one of these tours. I appreciate the interest of the hospitality association. I simply want you to consider that, among others, Dr

Howard Schaffer of Harvard Medical School, an expert on gambling, disputes that legalization of slots would attract those who now gamble illegally. Dr Schaffer says that not only would there be a substantial increase in gambling, but many would also probably return to illegal gambling eventually because the payoffs are always higher.

The Ontario Provincial Police anti-rackets squad has disputed this government's claim that the legalization of slots is going to eliminate the illegal ones, because the Ontario Provincial Police anti-rackets squad says that what you need is police focusing on these illegal slots. The fact is that offtrack betting hasn't eliminated bookmakers. The fact is that increasingly liberal liquor licence laws haven't eliminated booze cans or after-hours joints or bootleggers. An illegal slot owner is getting all of the proceeds. The illegal slot owner has a huge incentive to keep it illegal because he doesn't have to share it with the government, with the owner of the machine etc.

Mr Ron Johnson: I want to thank you for your presentation. We've all of us sat on a number of committees, and I can tell you that it's not very often that we have what appears to be, on the surface anyway on one side, such a consistent message from the local community. We've heard it from John Essa of East Side Mario's, Casey's Grillhouse, yourself. We've also heard it from Klondike Casino, Wayland Hotel and a number of others that are saying the same thing, that you're crying out for some sort of assistance as small businessmen and businesswomen.

I've got to tell you Mr Gravelle here is in a unique position right now. We're not really sure where the Liberals on this bill. We do know, though, that they voted against it on second reading. We know for sure where Mr Kormos stands. But we're hearing the small business community here hollering out for some help, and Mr Gravelle's in a unique position to take the leadership in his caucus and help support this bill, because I know that it means a great deal to the business community here in this town and will have a significant impact as millions of dollars flow south of the border. He's got a chance to help stop that. I know you'll be watching closely when we go to third reading.

Mr Kennedy: I just want to ask you about two aspects. The hospitality industry is synonymous with taking some kind of concern in the wellbeing of the community; many of them are family enterprises. I'm wondering how your industry and how you particularly here in Thunder Bay look at the prospect for increased criminality that is associated with these machines. I know there's debating things, but the police in Metropolitan Toronto — the staff inspector in charge of the morality squad says that these are a nightmare, that these will lead to increased crime. Because that's obviously an association and the kind of thing that would detract from some of the other elements of the hospitality industry, isn't that a concern?

Secondly, the money that goes into VLTs, the studies that exist in the States, in South Dakota where they've existed for the longest time, say that it comes out of other parts of the hospitality industry in large measure, that the discretionary dollars don't materialize from nowhere.

These actually weaken certain parts of the hospitality industry because it's the discretionary dollar spent on dining, on others that are going in there, and then of course it's tragically and unfortunately money that's spent on basic needs.

I wonder how those two concerns sit, because obviously this is a difficult thing. It looks like it could be beneficial from the straight dollar standpoint, but structurally and overall, as hospitality members are a part of the community and concerned about the quality of life for their community, how do they look at those two things?

The Chair: Thank you, Mr Kennedy. I'm sorry.

Mr Meady: Can I not —

The Chair: No, you cannot. You used your time by making your presentation, you see, and we only have 20 minutes per presentation. It's very important that we restrict it to be fair. We can't favour one over the other, Mr Meady. I would have liked to hear the answer to the question myself. We just don't have time. I thank you very much for attending today.

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CAMBRIAN PRESBYTERY, UNITED CHURCH OF CANADA

The Chair: Now I welcome Mrs Eleanor McLean, on behalf of the United Church of Canada, Cambrian Presbytery.

Mrs Eleanor McLean: Thank you for this opportunity to address this committee regarding the proposed expansion of video lottery terminals in Ontario from their present location in the established casinos of Windsor and Rama. I speak today in opposition to the expansion on behalf of Cambrian Presbytery, the United Church of Canada. Cambrian Presbytery is an area stretching from the Manitoba border on the west to Marathon in the east, including the northern areas of Red Lake, and to Fort Frances in the south. In this district there are 98 pastoral charges of the United Church of Canada.

In 1993, Cambrian Presbytery established a task force on gambling to address growing concerns about the increasing incidence of gambling and gambling addiction in our society. The extensive research done by that committee is documented in the Task Force on Gambling Report which is attached to your copy of my presentation today. As chair of that committee, I have read many papers, articles and books on the subject of gambling, and I have viewed two videos which I encourage you to view as well in this information-gathering process. The titles of those videos are listed in the resources for education and awareness sheet also attached to your copy of this presentation.

There are so many aspects to the problems arising from gambling which could be addressed. I have chosen to speak today primarily about the inappropriate action of government involvement in the promotion of gambling as a source of revenue.

British Columbia is the only province in Canada which does not have video lottery terminals at this time. In a report from the British Columbia Conference of the United Church of Canada is this statement:

"The United Church of Canada recognizes that gambling presents an almost irresistible avenue for governments seeking to stimulate economic development (especially in the form of jobs) and to generate increased taxation revenues.

"Yet, we believe that the lure to expand gambling as a strategy for economic development must be resisted because:

"It is based on incorrect and incomplete evidence and projections;

"Decisions taken are not reversible; and

"Government becomes entrapped as it becomes increasingly dependent on involvement in activities that reduce the quality of individual and community life — the very antithesis of its mandate. (This is known in economic terms as moral hazard — a policy that encourages the event it was meant to protect against.)

"Addiction to gambling affects the employers, friends and family of the individual. Indeed, like drug or alcohol addiction, addiction to gambling can affect entire communities.

"Looking at the bigger picture, legalized gambling exploits human resources in the same destructive way that strip mining, forestry clear-cutting and overfishing can destroy the very ecosystem on which they depend.

"Gambling is not a sustainable economic activity. It erodes and weakens those on which it depends for its success — the players, the employees, and the government."

The addictive nature of gambling may apply as much to governments as it does to individuals. Indeed, it has been said that governments are becoming the greatest addicts to this way of raising revenues.

In a paper presented to the Desjardin commission by the Conference of Manitoba and Northwestern Ontario of the United Church of Canada, of which Cambrian Presbytery is a part, the following statement is made:

"It is not right that governments should encourage gambling as a form of taxation since it is known that this activity is most addictive to those who can least afford to pay.

"Part of the tragedy of state involvement in and encouragement of gambling is the sign that even our government seems to have given up on the virtues of working to achieve your dreams.

"Part of the tragedy is that the poor, who have the greatest desire to escape from their current situation, are the easiest targets for messages which hold out hope based on luck rather than perseverance.

"Part of the tragedy is that the uneducated, who are less likely to be aware that the odds are heavily stacked so that the government always wins and the average gambler loses, are once again more vulnerable and more likely than the educated to be hurt.

"Part of the tragedy is that in our reliance on 'the big prize' we are indicating a lack of hope in an equitable society.

"Part of the tragedy is that in our promotion of the 'big prize' attitude we encourage the concept that in society some are winners and some are losers.

"These losses hurt us as healthy, sharing and caring communities."

The second point I wish to make today is that we can learn from the experiences of other states and provinces and we can act to prevent our government from making the same mistakes. Our neighbour to the west, the province of Manitoba, has extended video lottery terminals throughout the cities and towns of the province, not only into the casinos in Winnipeg, but also into bars and restaurants. In a series of articles published in the *Winnipeg Free Press*, April 16 and 17, 1995, video lottery terminals are blamed for numerous negative results, especially in small communities. Local charities are losing to government gambling operations. People are putting their money into VLTs rather than into community events.

In Minnesota, to the south of us, gambling has been a part of their society for a much longer time. Extensive research is being done by the Minnesota Council on Compulsive Gambling. This organization is recognized internationally for its up-to-date information about problem and compulsive gamblers in American society. In a publication entitled *Public Policy Think Tank Report*, published by the Minnesota Council on Compulsive Gambling, one of the potential threats identified which exists today in Minnesota is that increased access to gambling will indeed lead to more problems with compulsive gambling. Also identified as a weakness in the present situation is the addiction of the state government itself to gambling, while state officials remain in denial of the problems associated with it.

A recent article in the *Duluth News Tribune*, entitled "Many Are Losers as America Learns Gambling Doesn't Pay," states:

"The advertising that entices Americans to spend billions of dollars each year is deceitful and corrosive. The fact that it comes from the state, which ought to encourage people's strengths, not prey on their weaknesses, makes it worse. The state should not even allow gambling, much less conduct it."

Finally, I will touch briefly upon the particularly addictive nature of video lottery terminals. These machines give the player the illusion of being able to control the outcome of the game with skill. During the game there are many near wins which create an excitement in the player. This arousal, along with the illusion of skilful control, motivates the player to keep on playing. Some sources indicate that VLTs are especially attractive to women and are particularly addictive to youth. Researchers at the Harvard Medical School reviewed data from American and Canadian studies and concluded that between 10% and 14% of North American adolescents risk developing gambling problems. Even more chilling is that adolescents are at least twice as likely as their parents to become pathological gamblers.

The Thunder Bay office of the Addiction Research Foundation reports receiving an increasing number of calls related to gambling problems. Increased numbers of gambling addictions mean increased health care requirements to address the rehabilitation process. There are presently no trained gambling addiction counsellors in northwestern Ontario and there have been no announcements made about plans for funding these resources at the time of writing this report three weeks ago.

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In conclusion, we have a choice at this time to prevent the hazards that have plagued other states and provinces with the introduction of video lottery terminals. Why is the government of Ontario considering expansion of the number of VLTs? The *Globe and Mail*, June 14, 1996, reports: "The terminals will be opened first at racetracks and charity gaming halls. After evaluating the experience at these locations, the government plans to allow them in bars and restaurants."

Cambrian Presbytery of the United Church of Canada opposes this proposed escalation of a form of gambling which will be so destructive to the wellbeing of Ontarians, the very people the government is mandated to protect.

The Chair: Thank you very much, Mrs McLean. We have two minutes per caucus.

Mr Hudak: I'll be very quick. I wanted to thank Mrs McLean for her very sincere presentation, her objective observations and the fact that you obviously took a lot of time, you and your group, preparing this. There are some principles upon which I strongly agree with you, and I think members of this committee as well, in terms of the importance of community and encouraging individuals' self-help and independence. I think that's what attracted me to the Conservative Party, a view that the more government becomes involved in society, the weaker the local community bonds become. It's an issue we have to wrestle with at all times in government: what is going to improve the common weal and what is not.

Certainly so far in Thunder Bay today we've heard a lot of things about bringing back into the community the \$40 million that goes across into Minnesota — the argument would be more jobs and less despair — and bringing some of that money to the charities to increase their good works and therefore enhance the common weal; at the same time, to set aside funds so we can hire some addiction counsellors, that 2% of the revenue we're guaranteeing; and finally, to take a bite out of organized crime, which is running the machines currently.

The argument becomes, do you do a prohibition on all types of gambling, or is a better way to improve the quality of life in Thunder Bay, to look at video lottery terminals responsibly? A lot of the issues, as you've heard from the committee today, we're open to in terms of where they should go and what locations. I agree completely, coming from a community very much like Thunder Bay in terms of the good works of the charities, that we need to reinforce the community bonds and make sure the community charities will have a great deal of control in terms of money coming to them and what they choose to do with it.

I would ask you if you would take the time with your group to make suggestions. If the government does decide to go ahead with video lottery terminals, what is the best way of promoting the common welfare for Thunder Bay? How do we reinforce the community bonds and what mechanism would ensure that the funds are supporting the kind of works you and I both want to see in Thunder Bay?

Mrs McLean: I believe your question is, if video lottery terminals are introduced into Thunder Bay, what

would I like to see as precautionary measures. I would like to see a percentage greatly increased from 2% to address the problems. We're not just talking about treating one individual with a compulsive gambling problem; we're talking about dealing with a family situation where the mortgage money and the food money have been gambled away, so we're talking about the destruction of family life. We need way more than 2% of these proceeds to address all the spinoff problems that are going to occur if VLTs are introduced.

I'd like to pick up on another —

The Chair: Sorry, Mrs McLean. We're going to have to move on to the next caucus. You understand.

Mr Kennedy: I have to comment on the interest opposite in the common weal of Thunder Bay, coming from the government that's taken away hospital beds wantonly and not listened to this community and, further, that has put out requests for proposals already to install some of this. Our whole hearings are couched in some very relative interest on the part of this government in the common weal suggested opposite.

I'm very interested in what you said about a moral hazard, about a line which government either should not cross or at least should very much consider the impact of what it's doing. If you could, with the kind of consideration your committee has given previously or currently, talk about what kind of increased moral hazard the electronic slot machine revolution this government wants to do could itself represent, do you see it as a major step or just as a minor continuation of the gambling policy?

Mrs McLean: I do see it as a major step crossing the line of moral hazard, because it represents a step taken by government which will be detrimental to our society. As I said, the mandate of government is to protect the members of the community and to enhance their lifestyle, not to detract from it. If we're talking about common sense, as that government consistently speaks about, it is only common sense not to introduce video lottery terminals, which will be so destructive, particularly to youth and to the women who are the mothers of our children.

Mr Kennedy: Why do you think this government is going ahead then and is going to do it?

Mrs McLean: I think it's greed. They need the money. I think it's going ahead without considering the studies that have been done in other areas of North America, particularly in the United States and in the other provinces that have had very negative results and are wanting, in some cases, such as Manitoba, to withdraw the VLTs from small communities. Why are they considering making the same mistakes? Why do we make the same mistakes over and over again? We can surely learn from what has happened in other provinces in Canada.

Mr Kormos: Mrs McLean, I read your material when you first allowed it to be distributed and I read it again a second time. You raise points that, I have to tell you, I'm entirely in agreement with. What I find sad is that I think it illustrates the corrupting impact of these incredibly powerful monetary forces like gambling. What we've had is an industry which has some very powerful figures behind it. It's American-based; no two ways about it. There's a lot of money involved, not just millions, billions, at the end of the day.

My cousin came up from Mobile, Alabama, visiting a couple of weeks ago. I took her over the Burlington Skyway in the Hamilton area, down in southern Ontario, and she looked at those cars going across, she said, "By God, if I had a buck for every car that passed there, I'd be a millionaire." I said, "Then why don't you buy a slot machine?" In effect what's happening is that people are having a buck taken from each of them — nothing in return. They're being told it's entertainment. It's like the guy who hit his hand with the hammer, and people said, "Why do you do it?" He said, "Because it feels so good when I stop."

Mrs McLean: I was in conversation with Mr Don Ward of the Addictions Foundation of Manitoba and I asked him last January what effect the video lottery terminals and the casinos in Winnipeg were having on the cross-border gambling. He said that no formal studies had been done but that it was obvious that the bus tours were continuing. They were not losing business to their cross-border gambling right across the border in North Dakota.

As he and I talked, we realized there is a certain attraction to an element in our population who look upon gambling as a day out of town, to get on a bus and go with their group across the border. He said that in Manitoba that business has not been stemmed, and I don't anticipate that that business will stop, Happy Time Tours and other groups going in free busloads across to Grand Portage. Some people just like getting on a bus and going somewhere, and that's what they're going to continue to do.

The Chair: Thank you very much, Mrs McLean, for your report, and thank you to the task force on our behalf.

PRESBYTERY OF SUPERIOR, PRESBYTERIAN CHURCH IN CANADA

The Chair: Our next presenter will be the Presbytery of Superior, Presbyterian Church in Canada, Reverend Milton Fraser. You have received a written brief from Reverend Fraser. Welcome.

Rev Milton Fraser: Thank you. With me this afternoon is Reverend Jim Patterson as well, who's a member of our presbytery. Our presbytery has congregations in Atikokan, Fort Frances, Geraldton and congregations here in Thunder Bay.

Thank you for giving our presbytery the opportunity to be heard this afternoon. To begin with, we acknowledge with concern the proliferation of gambling in our society. Charity casinos, lottery tickets and pull-tab tickets are everywhere. They give people a remarkably faint hope that one day they might strike it rich.

Historically, our denomination, the Presbyterian Church in Canada, has had grave concerns over gambling and lotteries. The General Assembly of the church has approved statements in 1954, 1976 and 1990. In 1954, the General Assembly stated:

"Gambling discourages thrift and encourages materialism. It exploits philanthropy and debases charity. It tends to replace trust in providence by dependence on chance. It dulls social responsibility and destroys domestic peace. It prevents us from being faithful stewards of Jesus Christ

in the use of our time, ability and money. We are therefore unalterably opposed to gambling, whether it is carried on under governmental or religious or other auspices."

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Originally, the province operated lotteries to support locally based cultural and sporting events and not for essential services. Even under such limited conditions, the root sickness and the debilitating effects of gambling on families was more than evident. The proposed increase in readily available means of gambling will not remedy any already damaging component in our society.

We have some serious questions to ask: Is the government seriously urging our citizens to be less diligent in work, to spend less time with their families and to squander more of their income on gambling rather than in the consumer economy sector? Is the government serious about funding its operations and about caring for its less fortunate citizens by increasingly depending on vices? Do the ends really justify the means?

We recognize that we are being asked to address not gambling in general but whether VLTs should be placed by the government for its citizens to use. Should be the government be so ill-advised as to pass this legislation, we have some serious reservations about the effects these machines will likely have.

Does the government foresee who will be responsible for ensuring the counselling and monitoring of problem gamblers? Although a small percentage of the take is designated to be used for addicts, who will oversee this process and what if the amount set aside does not cover the actual needs of an addicted population?

Is it wise to increase the financial drain already being experienced by the families of those people already patronizing drinking establishments? Is it wise to provide further opportunities for financial loss to families in the middle and lower classes of our province? It is unlikely that the majority of the money realized from VLTs will come from the pockets of wealthy Ontarians.

We note that the focus of protection for the public for VLTs is an age restriction. In our society, reaching adulthood is marked by the participation in activities and purchases of products which are injurious to physical and emotional health, for example, the purchase of tobacco and the consumption of alcohol. Are we now to add to the list the use of VLTs? It appears from a recent newspaper article that the plan is for VLTs, if successful in gaming halls and racetracks, to be placed in bars and other licensed establishments. How healthy is it for our society when we mix alcohol and gaming? Are double addicts somehow better?

The age-of-19 limitation does not address the statistics of addictive gambling. These statistics state that addicts tend to start young, and the most serious gambling problem categories tend to be males and an average of 30 years old. Does the government envision the serious consequences of enabling a generation of 19-year-olds to get started on the road to wastefulness, idleness and possibly addiction?

Material from the Addiction Research Foundation shows that 85% of Manitoba residents who seek treat-

ment for compulsive gambling report problems with VLTs.

The age limit certainly protects children from spending lunch money but not university students from spending book money or fathers and mothers from spending grocery money. In a province where jobs are still very scarce and welfare funds are becoming very scarce indeed, is the intended legislation wise?

Members of the standing committee, we are concerned and we trust that you are as aware as we are that most of the people who already gamble can ill afford to do so. We trust also that you are familiar with the maxim, "The ends do not justify the means." Is the government really serious in thinking that the proposed legislation will improve our province? Thank you for giving us this time.

The Vice-Chair: And thank you for the presentation. We are now going to take about three minutes per caucus for questions, starting with the Liberal caucus.

Mr Ramsay: Thank you very much for your presentation. You ask a series of very poignant questions in your presentation, and I think they really need to be asked. I want to ask you one too, since we have a little time. The government will not refute the fact that there are some people vulnerable to gambling, and in fact they're going to create a fund; a certain percentage is going to come from this. You've stated that.

I just wanted to ask you why any government would proceed with any sort of initiative that they know will put some — I'd bet a small percentage, but some percentage of the population at risk? Why would you go ahead, knowing — and nobody refutes this — that you are putting some people at risk?

Rev Jim Patterson: Probably it's a philosophical oversight; that is, when you begin to create a program, you have to have a solid philosophical base that's based on helping the people or bettering the province. In this case, it simply looks like it's a ploy to gain more tax dollars. There are other schemes that could be used. We could legalize prostitution, for example, and that would bring in dollars, but the government wisely hasn't done that yet.

Mr Ramsay: Yet.

Mr Patterson: I hope they won't do this one either.

Mr Crozier: You mentioned, sirs, Manitoba in your presentation, and you alluded to the parents spending grocery money. It was disturbing to me, as reported in the newspaper recently, that more per capita is spent on gambling in the province of Ontario than on groceries. Do you think that says something about society today and gambling?

Mr Fraser: For sure. An article in this morning's paper here in Thunder Bay talks about Casino Rama and how parents left their children in the parking lots to spend the day while they went inside and gambled. That really spoke to me this morning as I opened up the paper, of parents' wisdom in caring for their children while they had some fun and entertainment with the gambling.

Mr Crozier: And not everybody does that, a very small number, but that article bothered me as well. We want to create an environment, we say, government — and I don't think there's any disagreement on this — where our province can grow and prosper; government

wants to get out of the way so that environment can be created. But these machines will go into bars and restaurants if they get started into racetracks and casinos because the pressure will be immense on those people over there to allow that, and 70% of what's taken in will be kept by those over there who have said in the past that government can't spend money as well as private individuals. Like you, I can't quite understand the objective of all this except that it's revenue for government because it needs the money.

Mr Kormos: I'd like to follow up on some of the discussion. I appreciate the analogy to prostitution. I'll decline that because I have concerns about the way prostitution is illegal and the way it's usually prostitutes who get arrested. In my view, they tend to be the victim and it should be the other party who should be arrested.

Let's make this analogy and talk about an addictive substance: drugs. I don't care whether you want to talk about marijuana or hash or cocaine or crack cocaine or speed or heroin. The fact is that most Ontarians will never take it even if it's offered up to them, and there will be more than a few Ontarians, perhaps youngsters, who will smoke marijuana or hash or even do cocaine or speed, and they might do it once or twice and they won't become addicts. There's undoubtedly no bigger underground economy in this country, in North America, perhaps in the world, than the drug trade. By God, if governments could tax that you'd be talking about resolving deficits: boom — one year — no cutbacks.

Recognizing that only be a small portion of the community would use it and an even smaller portion would become addicted to it, it seems to me that would generate such great revenues by virtue of taxing the drug trafficker that, "Heck, why don't we Ford Pinto the problem?" That's what Mr Kennedy was talking about earlier. Remember Ford Pinto? They would rather pay off the lawsuits than change the design of their gas tank filler. Why don't we legalize cocaine and heroin? We can tax the drug traffickers a 2% tax and that will be enough to provide health care, drug treatment programs for every addict in North America. It strikes me as something of a parallel; I don't know about you gentlemen.

Mr Patterson: I think the logic is consistent; it's also abhorrent. The problem is that when you allow something legally, it gives the government stamp of approval, and part of the mechanism that keeps people from doing some things is taken away. Not everybody is going to do it but right now, for example, with alcohol use I know that the stats say around 70% of the population of this province use alcohol. They don't all abuse it and they're not all alcoholics, but I spend a lot of my time cleaning up after alcoholics and their families and their grandchildren. It's not a good deal. The government already makes a lot of money in that particular area. I don't think we need more.

1510

Mr Kormos: I guess it's a good thing that the drug mob doesn't have as much influence on these people as the gambling dons do.

Mr Patterson: Right.

Mr Flaherty: I thank you for your joint comments today. I want to speak with you for a moment about something that I think has to be discussed when we speak

about issues such as this, generally, and that is the nature of Canadian society, our pluralism and multiculturalism, both of which are, I think you'll agree, realities in our country. When I hear Mr Ramsay put the suggestion, "Why would government promote legislation where some percentage of the population would be at risk?" of course, alcohol, we had Prohibition and then the governments made a decision 70 years ago, rightly or wrongly — I don't know whether you think it was right or wrong — that it's better to regulate it stringently than to let it go on unregulated in society. In making that decision, certainly all governments in North America and Europe and so on were putting a certain percentage of the population at risk, because we know a certain percentage will addict.

I say to you then, when we consider the reality we've heard from many witnesses here that many people in Canada and Ontario and in the world, for that matter, view gaming as an acceptable form of entertainment, is it for the government of the day, any particular government — the NDP government bringing in casinos in Ontario, the Liberal members here, Mr Crozier, advocating VLTs in tracks and charity gaming halls but not in restaurants, and some in favour of break-open tickets and so on — does it lie in the government's mouth to say that a certain part of society shall be denied a form of entertainment that they view to be acceptable and that has been practised by them in moderation? We know that also from the other eight provinces in Canada and from other jurisdictions.

I say this also in the context of the United Kingdom and Ireland and Northern Ireland, where I've been recently, where I saw racetrack gambling and turf accountants and legalized bookmakers and I did not see societies that are falling apart from any exterior point of view.

How do we deal with this issue of pluralism and tolerance in the Canadian context?

Mr Patterson: I think you have to be careful, when we're talking pluralism, that we don't decide that we therefore have to have what every culture thinks it needs. For example, there are cultures and religions that practise polygamy, and Canada hasn't yet gone that route. Maybe they should. However, we've decided that we're not going to do that because probably the hurtful aspects would outweigh the beneficial aspects. I think this is another case. There are cultures and there are religions that practise gambling. It's quite different, however, when the government says, "We run the gaming house," or "We run the VLT," in this case.

Mr Flaherty: Or, "We sell the alcohol."

Mr Patterson: Or, "We sell the alcohol."

Mr Flaherty: Are you in favour of the prohibition of alcohol?

Mr Patterson: I'm probably not in favour of prohibition, because it didn't work, but I'd like to see the government making a lot less money off alcohol and tobacco and all the other stuff.

Mr Young: Which brings me to my question. I remember when the only lottery ticket you could buy was the Irish Sweepstakes. That was a big one. Then it was the Olympic lottery in Montreal etc, and now it's available elsewhere.

If you wanted to have a government that got no revenues from gambling, how would you make it happen in Ontario? I really take your presentation to heart. If the province of Ontario got totally out of it, people would just buy lottery tickets and people would cross the border like they're doing from Thunder Bay now. How would you eradicate it?

Mr Patterson: We had this come up with cigarettes a while back, where we backed the price down because we were having an increase in cross-border smuggling, and I think you've got a point. I don't know whether the right solution was to simply lower the price in Ontario. I don't know whether in the long term that's going to be a wise solution. I see an increase in the sales of cigarettes again, so I'm not sure that was the solution. I think the hard solutions are public education at a foundational level: more money to help people know what good values are. I suspect we can do that through schools, we could do it through faith communities and we can do it through simply community groups.

The Vice-Chair: On behalf of the committee I would like to thank both of you for your presentation.

ONTARIO NATIVE WOMEN'S ASSOCIATION

The Vice-Chair: Our next presenter is Marlene Pierre, Ontario Native Women's Association. Ms Pierre, you'll have 20 minutes for your presentation and you may like to leave some time for questions at the end.

Ms Marlene Pierre: There are folks at this table who tend to make their own speeches, so I think I'll use up as much time as I need to, give or take 10 each way.

My name is Marlene Pierre. I'm the president and chief executive officer for the Ontario Native Women's Association. We are a grass-roots women's organization that has membership in both on- and off-reserve communities. Our organization has been in existence since 1971. We have over 83 volunteer organizations in those communities and we are the only provincially mandated organization of aboriginal women in Ontario.

Having said that, I'm very pleased to be here to speak on the issues and interests that affect our families' health and wellbeing. I don't know if we are the only aboriginal group in Ontario that has made an effort to come before this committee, but I want to say that I appreciate being here because this is a very important committee to aboriginal women in that you not only concern yourselves with the affairs of these types of bills that promote certain kinds of activities but overall the administration of justice in Ontario.

Some issues that we've dealt with as an organization are the advancement of the women's issue on equality; we've been involved in Indian Act revision and legislation policy development; we have tended to advocate on change for aboriginal women and their families. We do this because from research that we've conducted since 1980, we have found statistically that our families are the most vulnerable of all families in Ontario and in Canada, that over 50% of our families are single-parent and female-led. That says a lot in itself, that the needs in our families are the most acute financially, socially and in every other aspect of justice.

I come here with some information that I would like to leave. We have our information documented that may be of good use to the committee.

There are some other important statistics that I think you ought to know when you're advancing the cause of gambling and to raise revenues through that method for whatever your agenda may be. I'm told that this is to follow an election promise to reduce the deficit.

In Ontario there are approximately 60,000 aboriginal families. I take this information from a study that was done in northern Ontario. I want to provide you with a profile of what our families are like. Because of our social and economic condition we are forced in many instances, myself included at one time, to look after our families through social assistance. So I'm aware of what I'm talking about.

In 1993, where these statistics come from, this gives you an idea of how many families are on social assistance from our communities. Between the ages of 15 and 19 years we have 54.3% who are on some form of assistance, and it gets higher in the next category. Between the ages of 20 and 24 we have 66% of our families that are on some form of social assistance, and the figures go on. The average income of \$20,000 and less was at 81.8%.

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This profile speaks to what we're dealing with directly today, and that is how our families survive. They survive on a very low income, usually an average-sized family with three children. Those statistics give you an idea of how the most vulnerable have to cope.

Our women have no access, only through this organization, to the types of decisions that are made by governments municipally, provincially and federally, so there's a lot of responsibility on our shoulders to make you, the decision-makers, the rule-makers in the province of Ontario — what you do and what it does to our families. We're saying that we know these VLTs are going to go into effect no matter what the citizens of the province of Ontario say. The least that we can do at this point is to say how we want it done and how we want to see the benefits, so-called benefits, be spread among the citizens of Ontario.

I've listened to some of the comments on the televised sessions and I'm rather distraught, I suppose, at some of the attitudes, both of some of the folks who are sitting around this table and some of the folks who have spoken. We don't come here as someone who has a vested economic investor attitude. We're not business people who engage by and large in this kind of activity as an investor. We are usually the consumers, and those folks I talked about earlier are the ones who are the majority of participants in this kind of consumption.

Everyone in this room and everyone in Ontario and Canada and the world has a gambling instinct. All of us who are sitting around this table, myself included, wouldn't even be sitting here unless we felt that we could gamble on the good graces of the public to elect us to the positions that we're in. In our community we have an additional acute sense to survive, to put food on our table, to have a roof over our head, to put shoes on the children's feet, to make sure we've got a good place in

the food bank's lineup. That's the condition that we're dealing with. I sense that you also have an acute sense of survival, or else you wouldn't be coming out to talk to the people of Ontario, that whatever you're doing must meet some of the demands of our own people other than deficit reduction.

I'm not here to defend the act or criticize it; I don't know enough about legislative lingo to make sure that all the i's are dotted and t's crossed in our favour. However, I do want to bring some sense of what the aboriginal community might feel about this new advent.

I hear the presentations from the arts groups and other kinds of groups that maybe do not have the same sense of survival that we have. We're not interested in singing and dancing and performing; we're more interested in eating. The urban aboriginal groups — and some of the stories that I will tell you are true.

In a small northern community — I won't name it — west of Thunder Bay, we have food banks in those communities as well. There is a sign that is up at the food bank hall that if you're seen at bingo you are not eligible any longer to receive any assistance from the food bank.

Again, listening to the conversations around the table that this is a form of entertainment which we seem to enjoy a lot more than the rest of the public, I know that you can walk into any bingo hall and see at least 75% to 90% of the participants are our people. And why are they there? Because they have this sense of survival. If you've ever seen them win \$1,000 or \$1,800 and you hear what they say, I'm happy for them, because I go there too, and when I see somebody win I know they're winning some money so that they can put those extra — they spend \$10, \$20, \$15 so that they can have the chance to win \$1,000. When they win that \$1,000, do you know what you hear them say? They say, "Now I can buy some clothes for the children; I can pay that bill." Those people are relying on that money to survive. It's not an entertainment to Las Vegas to spend some expendable cash. Any cash that aboriginal families have goes right back into the community.

This is what I can't understand about the policy and the direction of this government. It doesn't make any sense to me that no matter whether your income is through social assistance or a job or whatever it is, our money from the Indian families in this province goes right back into the community. We don't have the opportunity to save, like everyone else. So our income is entirely spent on our survival, be it a break-open ticket or any of the other forms of gambling.

We have some recommendations that we would like to make, and these are based on the fact that all the other groups that have made presentations here who derive their funding directly from mainstream registered charitable organizations — our groups don't belong. I know this. I've been an executive director in the city of Thunder Bay and I'm very familiar with the Friendship Centre and all the other organizations that are here. Very few, none of them maybe even, belong to the United Way or any of those other registered charitable organizations that I assume will be the main benefactors from any of these funds that are derived. We don't belong to those things.

For some reason our folks don't feel comfortable. There always is an element of racism. We see it from the chamber of commerce right into the schools and into the streets, where racism exists a great deal in our community. Certainly reserve groups do not benefit from mainstream charitable groups; never, ever participate in those kinds of things.

So our recommendations are going to be fairly specific to the aboriginal community, yet somehow I think other Ontarians would like to see this as well, especially those who work with poverty groups, that there is a guaranteed access for the aboriginal community through legislation. Whether it's done through a separate crown corporation or whether it's done through a crown corporation that includes representatives from all sectors in Ontario that might benefit, what we want to make sure of is that aboriginal communities such as our organization or some other form of aboriginal registered charitable organization have access through legislation to these funds.

1530

We want to make sure that there is a guaranteed social support network system and that appropriate funding programs are set up to serve those people who are going to be damaged, whether we like it or not, by this kind of activity. We've seen it just in the recent opening of the Rama casino; children being left unattended in cars while the parents are off gambling inside the casino. Those are the kinds of dysfunctional social examples that I want you to face, as the Rama people have faced; they will no longer allow children to be on the property. Yet somehow I don't know if that's going to be an answer, because those kids are going to be left at home alone. I can give you many examples of children dying in their homes because their parents were off gambling. If this is what Ontario wants, then this is what Ontario is going to get.

So those are the main recommendations that I have, put forward to you on behalf of the aboriginal families in this community. I appreciate the presence of this committee which has travelled to this northern community, which I think is a positive step. We do not expect this government to do that in the way that the former governments have made sure that there was a presence in the northern part of Ontario. You all know that we felt for 20 or 30 years a movement among us that all the resources come out of the north, go to the south and get distributed all over the place, all over Canada, and very little comes back into our own northern areas. That's why I'm pleased to see you here. If you've come to listen, please hear us and what we're saying, in that the moneys that come out of this exercise will be turned back to help those people who are going to suffer eventually from this exercise. I welcome any questions.

The Vice-Chair: Thank you, Ms Pierre. We will do questions, about one minute per caucus, starting with Mr Kormos.

Mr Kormos: Ms Pierre, thank you very much for your comments. What I think I'm going to do is I'm going to give the government caucus my one minute. I'm sure they would want to exchange some views with you. I've heard carefully what you've had to say.

The Vice-Chair: Fair enough. Mr Flaherty, two minutes.

Mr Flaherty: Thank you, Mr Kormos, for that one minute.

Mr Kormos: Think nothing of it.

Mr Flaherty: I guess that means I have 14 minutes left in Andy Warhol's 15 minutes.

With respect to your submission, thank you, and I listened carefully to what you were saying. One of the primary concerns, as I listened to you, was an addiction problem, I take it, with gambling that some native persons have, just like many non-native persons, some difficulty dealing with gambling or gaming in moderation. You are aware, I trust, that in the plan for the legalization of VLs there is a commitment of 2% of the gross revenues, which is likely to be a substantial sum of money, to education and treatment and training of persons to treat those who suffer from gaming addictions generally. Not only is that commitment there, but also it is a commitment that has not been made in the past by governments like the former NDP government, which got Ontario into the casino business. Are you familiar with the 2% aspect of this?

Ms Pierre: Yes, I am. That's earmarked for gamblers. I'm talking about the other social requirements that are going to be needed, the effect of negligence on families, the lack of moneys to support families. It's not just the addiction part that I'm worried about; we're worried about the effect on crime, on the increase of violence in the home, the neglect of children.

The former government allocated millions of dollars to an aboriginal healing and wellness program. I would like to see that program continue. I have a feeling this government wants to get out of that program as well. If our people are going to suffer more from this kind of activity, I want to see more money put into those kinds of programs that are going to address —

Mr Flaherty: You're aware of the \$200 million flowing from the Rama casino to the native peoples, \$200 million from that casino?

Ms Pierre: There's no guaranteed access to us. The Metis had to go to court. That money is earmarked for first nations. You know what? If you really want to be real about the political scenery in Ontario, aboriginal women's groups are totally excluded from the first nations' criteria for service. We can't even access those dollars. We may have to end up going to court too.

The Vice-Chair: Ms Pierre, we are going to have to move on to the Liberal caucus for one moment. Mr Ramsay.

Ms Pierre: I would like to have continued discussion with Mr Flaherty on this issue.

Mr Ramsay: I'll give my minute up to Marlene.

The Vice-Chair: Go ahead. You have one minute.

Ms Pierre: Not today; we could continue this another time.

Mr Flaherty: I'll be happy to talk about it today.

Mr Ramsay: Marlene, I just wanted to thank you very much for your presentation. We just started yesterday in Toronto and now we have almost completed the second day. I haven't heard either of the rooms we've been in as quiet as it was when you made your presentation. I think that says a lot about what you said. Probably all of us are

still absorbing what you had to say, and I want to thank you very much for your comments.

The Vice-Chair: Ms Pierre, on behalf of the committee, I want to thank you very much for your presentation.

BEST WESTERN NOR'WESTER RESORT HOTEL

The Vice-Chair: The next presenter is John Beals, president of Best Western Nor'Wester Resort Hotel. Welcome, sir. You'll have 20 minutes for your presentation. You can begin any time, and you may want to leave some time for questions at the end.

Mr John Beals: My name is John Beals. I am the president and general manager of the Best Western Nor'Wester Resort Hotel, which is a 113-room, hotel-motel complex, restaurant, lounge and meeting room facilities for upwards of 450 people. The hotel is located on 45 acres of land adjacent to the Nor'Wester Mountains, which is a mountain range just out that way from us. It's in the rural portion of the city of Thunder Bay on Highway 61, which is the highway going towards Duluth and the Grande Portage casino some 35 miles south of us.

I am also the owner of the Neebing Road House, which is one of Thunder Bay's long-standing — I consider it one of the better places in Thunder Bay to enjoy a meal. It has a combined occupancy of 350 persons. It's located on the highway immediately across from the Nor'Wester Resort Hotel. I am also the president and managing partner of the Thunder Bay Tournament Centre, which just opened in the first part of January of this year. It's a dual ice surface hockey arena complex, and its prime use is for attracting tournaments to Thunder Bay and people from northwestern Ontario, across Canada and the middle United States. It is for tournaments, hockey camps, other sporting events and trade shows.

In saying all this, I appreciate the Ontario government's desire to obtain some grass-roots input into VLTs.

The economic environment we in the hospitality business are living in is, to say the least, not very healthy. Government cutbacks on personnel, meetings, conferences and travel, even though I feel it was necessary to do it, have impacted the hotel industry considerably. The Nor'Wester Resort Hotel's government business this year is down 40% over one year ago. We are projecting an additional 10% to 20% decrease in government business over the next 12-month period. Corporate travel and motor coach travel is stable, while leisure travel this particular year is down about 10%.

Between my three businesses, I employ approximately 175 people, with a payroll of approximately \$75,000 every two weeks. I have mortgage payments of approximately \$40,000 a month and taxes of approximately \$200,000 a year.

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Lending institutes are less and less interested in lending money for expansion, new development and acquisitions. If they do, they require at least a 40% cash equity and the ability to maintain a debt service coverage ratio of not less than 1.7 to 1. Their tolerance for downturns in the economy affecting the hospitality industry, to say the least, is disheartening.

I'm neither a large employer nor a small employer in the hospitality business. I'm an entrepreneur who wants a healthy industry and I am the type of person who desires to expand my businesses. I take pride in employing people and I take pride in the contribution my employees and I as a group make to the fabric of this community.

Are we in difficult times? I believe we are. Can we continue on the same route we are going? I believe we can't.

"To gamble or not to gamble" I don't think is the question. Bingos, so-called charity roaming blackjack tables, Texas hold 'em games, the buying of lottery tickets, Nevada break-apart tickets, instant scratch and win tickets, illegal machines and cross-border casino gambling are all part of our lifestyle right now.

The challenge is to find a solution for a win-win situation for this province and for the hospitality industry. It is not just for the survival of this province and for the hospitality industry. It is the ability to be able to grow and expand and create more jobs and more development in a responsible manner.

If an example can be taken from other provinces on VLTs, how the VLTs have helped the province and the hospitality industry, then the answer whether VLTs should be allowed or not or how to implement them is clear.

I believe that VLTs, if implemented with tight regulatory controls and a limited access environment, can meet a legitimate entertainment demand and provide a significant stimulus to the hospitality industry.

The Chair: Thank you, Mr Beals. We have approximately three minutes per caucus. First the government caucus, Mr Flaherty.

Mr Flaherty: Speaking about the hospitality industry in northwestern Ontario, sir, we had some commentary yesterday from I think it was Mr Seiling on behalf of the Ontario Hotel and Motel Association, his estimate being, as I recall, as I noted, the creation, he thought, of about 10,000 jobs in the hospitality industry as a result of the phased introduction of video lotteries. Have you had an opportunity or have you looked into the likely job prospects, employment prospects, concerning that?

Mr Beals: Let me answer it this way: If we continue on the route we're going right now, we won't be able to maintain the jobs we have now in the industry. We have to have the ability to have an income to be able to supply our creditors, government taxes and be able to have enough bottom line that we can go to the bank and start the creation of new ways of development within our properties, and that in itself then creates more employment. But initially we've got to stop that bleeding or that potential of not being in business. I firmly believe there are a great number of persons in the hospitality industry who are hanging on.

Mr Flaherty: If I can just address one other subject, we know and we've heard representations here about the number of so-called grey machines being used by minors and being in corner stores and that sort of thing in Ontario now. Under Bill 75, ultimately some licensed premises would be the recipients of VLs. What steps would you envision being taken by licensed premises to

ensure that persons under the age of 19, as would be required by Bill 75, would not have access to the area where the VLs were located?

Mr Beals: I have three licensed establishments on the corner and it is by no means a threat of losing my licence. That licence is very important to me, my staff all having taken a program. To me, that is a means to income. I believe that the VLTs should be regulated in controlled environments similar to the service of alcohol and that the onus would be put on the establishment that any person under the age of 19 being found in those areas would be in jeopardy of losing their licence as they would be for alcohol consumption or being in a place where alcohol is served.

Mr Guzzo: Sir, with regard to your situation here, we're talking about a payroll of \$75,000 every two weeks.

Mr Beals: Yes.

Mr Guzzo: When you refer to the \$200,000 a year in taxes, that's really taxes?

Mr Beals: That's property taxes.

Mr Guzzo: That doesn't include your income tax, provincial and federal.

Mr Beals: We have a minimum income tax in Ontario right now that some government brought in and that's about the only income tax we pay because we don't have much of a profit at the end of the day.

Mr Guzzo: Just let me tell you, sir, that the principle behind the government's action herein has been with regard to employment, both with placing these in the horse racing industry and looking at the hospitality industry. We have a lot of support because in the Liberal government in Ottawa, Mr Chr tien and Mr Martin talk incessantly about doing something to increase employment and we know that we're on all fours with that government, and now I'll turn you over to the Liberal Party of Ontario.

Mr Kennedy: Thank you for your presentation. It certainly is an understanding of the curious nature of the hospitality industry, the risks that you're taking, but I'm wondering if you could direct some comments to the risk the province may be taking. You asserted in your statement that we have gambling. Would you agree that gambling and the degree of it is something for politicians to make the decision about, or do you think it's just a matter of course that it's regular business now in Ontario?

Mr Beals: No, I think it's very important that there be regulations. One of the problems that I see now, with the quasi-legitimate floating blackjack and Texas hold 'em games, is there is no real control of how those funds are coming in. They're supposed to go to charity, but you've got no way of controlling that. With the video lottery terminals, I believe it is very much controlled and I believe the controls that are being sought after here are correct.

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Mr Kennedy: That's what I'd really like to ask you. The scope of this is a potential to increase the amount of gambling in this province by 50% to 100%. The state lottery in South Dakota is now only one ninth the size. So VLTs are nine times as big as the state lottery there, where they've been the longest.

Two concerns: One is that a number of police forces in this province are concerned. They think that VLTs are a nightmare, that they bring increases in crime, and in the hospitality industry, the description that you gave of your business is it's very family oriented. I wonder if you might comment on that. Also, the studies that are coming from places like South Dakota that say that this large amount of money is coming from somewhere, and where it's coming from is other discretionary spending on the part of some of the people — restaurants and hotels and so on — and whether there's a concern that this might be a very short-term fix in terms of the kind of support the hospitality industry needs.

Mr Beals: I don't believe it's going to be a short-term fix. Some 40% of my client base in the hotel is corporate travel. We have a Happy Time tour bus that stops in front of our door to pick our clientele up and take them across the border to deposit their dollars in the United States. I don't think that's very wise.

Mr Kennedy: And the prospect of crime? How does that element —

Mr Beals: I think we've got a crime problem with or without gambling.

Mr Kennedy: But the idea that police forces out there are talking about VLTs specifically, the kind of compulsion they create among people, the opportunities they give for laundering money, those kinds of things, as being a grave concern to them: As a responsible member in your community, how do you think that concern is being addressed and how should it be addressed?

Mr Beals: I frankly haven't read that or heard that from the police force here.

Mr Guzzo: Those police officers only talk to the Liberals. We haven't heard it either. They dig it up when the leadership races come along.

Mr Beals: We have a number of problems within our community, and I think the social issues that we have and the problems that we have all have to be addressed. I would certainly hope the dollars that are coming out of these VLTs on the government's part are put back into some of the social programs, not just that are caused from gambling but from all of the other areas.

It's odd, when you have a business, how many phone calls you get from people from charities and small organizations asking for donations. When your bottom line is a little thicker and it's on the black side, you are your brother's keeper if you are a small business person. You look after those types of organizations and you pay. When you're in the red, you can't, and that's when you depend on government to help them out and you shirk the responsibility on to them. Give us the dollars, give us the bottom line; we'll provide the income and the jobs and we'll help pay the charities.

Mr Ron Johnson: You look confused now. Kennedy's confused.

Interjections.

Mr Kormos: Does my time start now, sir?

The Chair: Yes, please do.

Mr Kormos: You know that you and I might disagree on this whole proposition — I suspect you do — because, you see, I've got all the concerns that these people don't and it's based on the stuff I read and the experiences I've

had and the things I've seen. I trust you don't fear the addictiveness of slots machines the way I do?

Mr Beals: I fear addictiveness completely. I fear addictiveness in alcohol. I run establishments that serve alcohol, and I fear that. I don't like to see anybody overindulging in anything.

Mr Kormos: But you don't agree with me that we should abandon this folly of 20,000 slot machines in Ontario because of my fear of that addictiveness?

Mr Beals: I don't consider it a folly.

Mr Kormos: Having said that, why would you stop at the hospitality industry? Why wouldn't you put them in corner stores too? They sell most of our lottery tickets right now. They do most of the provincial gaming as it is in terms of volume.

Mr Beals: I guess I would stop at the hospitality industry for a couple of reasons. One is that it is a natural location for them. Throughout the world, gambling, food and alcohol consumption tend to go hand in hand. Where people come from out of state as travellers and tourists, they are looking for recreation, and that is part of recreation.

The second one is that I don't see corner stores in trouble the way the hospitality industry is and I don't see corner stores having the potential to expand and create employment as I do the hospitality industry. So I would say don't put them in corner stores where it's not a controlled environment.

Mr Kormos: The racetrack industry by and large says, "Don't put them in hotels and motels, because it's okay for the racetracks to supervise them, but we don't want to share it with our brother and sister entrepreneurs in the hotel-motel," and now the hotel-motel is saying, "We don't want to share it with our brother and sister entrepreneurs." Because the corner store people tell me they're hurting too. Maybe they're misleading me.

Mr Beals: You've got a dilemma, haven't you, where to put them?

Mr Kormos: No. I'm asking you —
Interjection.

Mr Kormos: I know where to put them. One, two, three, four, five, six, seven, eight —

Mr Ford: Don't be rude now. You're being nasty.

Mr Beals: I think it's inevitable that VLTs will come. If it's not today and it's not next year, it will be at some appropriate time. We in the hospitality industry need support now.

Mr Kormos: You're going to get the machines. They've got the order in for them already. The committee hearings aren't even over. Honest, you're going to get the machines. Don't worry.

Mr Beals: Thank you.

Mr Kormos: You put that square footage up. You may not have enough political clout, because you've got other hotels that are going to compete, you know. We're going to have to see who's best connected, but there will be slots in hotels.

Mr Beals: I don't even know how to answer that one.

Mr Kormos: There'll be slots in hotels.

The Chair: Mr Beals, I thank you for attending here today and your presentation to the committee.

Mr Beals: Thank you very much for the opportunity.

NIPIGON DISTRICT MEMORIAL HOSPITAL

The Chair: Our next and last presenter for the day is the Nipigon District Memorial Hospital, Ms Levina Collins, director of development. Good afternoon, Ms Collins.

Mr Flaherty: Just before the next presenter, I would on a point of order want to make one quick comment for the record. That is that Mr Kormos just recently and previously a number of the members have stated on a number of occasions that RFPs have already gone out for the purchasing of video lotteries. This is not accurate. The requests for proposal have not gone out with respect to the purchasing of video lotteries. That is for the record.

Mr Crozier: That is not a point of order.

The Chair: That is not a point of order, Mr Flaherty. Mr Crozier's objection is well founded.

Mr Kormos: They're in the mail. They haven't been delivered yet.

The Chair: Please excuse the delay, and I'd ask you to proceed.

1600

Ms Levina Collins: I'd like to thank the standing committee for the opportunity to address the issue of the installation of video terminals in small communities. I am Levina Collins. I am the director of development at the Nipigon District Memorial Hospital. We are a registered non-profit organization. Our health care facility serves a catchment area of 5,500 people comprised of the townships of Nipigon, Red Rock, Dorion, Hurkett, Beardmore, Pays Platt, Macdiarmid and three first nation reserves.

Nipigon Hospital is a health care facility of the future. We are very vertically integrated, with a vision for the future. We are always looking for new ways to improve the quality of life for people in our communities and we offer one-stop shopping for health care.

Many organizations support us through the sale of Nevada tickets and bingos. Introducing video terminals into small communities will ruin us. Small community organizations will fold with the loss of volunteers. We truly believe that some gambling is needed, but the introduction of VLTs will ruin the small communities that depend on bingos and Nevada sales. At this time, I would like to ask the government to reconsider installation of VLTs in small communities.

Northern Ontario has the highest alcohol abuse in Ontario. For this reason alone, we are very concerned. For your information, I have enclosed in my presentation a section of the 1995 Community Health Status Report from the Thunder Bay district health unit. We believe that "health is a positive state of wellbeing to be achieved by individuals, families and communities for life." We believe the health status report is not just a collection of statistics and charts; it is a representation of the lives of our communities.

The incidence of alcohol abuse in the youth of our communities is of particular concern. As a community hospital, it is of major concern for us. We see the introduction of VLTs as a way to lure youth into bars and licensed facilities. It is not hard to figure out where this will lead. More youth will combine their drinking with gambling, and this leads to more crime.

We truly believe the government must use some common sense. Leave things the way they are. There are enough ways to gamble in our small communities now.

We believe the proposed changes in Bill 75 are being pushed through too fast. We want the government to take time to listen to the people. The government has to look at the big picture, especially in northern Ontario, where the abuse of alcohol is a major problem.

As a Rotarian, I often use the four-way test: Is it the truth, will it be fair to all concerned, will it build goodwill and better friendship and will it be beneficial to all? This Rotary motto can be used in all walks of life. If you can't say yes to all those questions, there is a problem. I suggest that we try the four-way test regarding Bill 75. I believe that it's not fair to all concerned, that installing VLTs will not build goodwill and friendship and that it will not be beneficial to the wellbeing of small northern communities.

I would like to add that we do not have the population base to have large fund-raising venues like gala balls and celebrity dinners. We really depend on our bingos and Nevadas to support all community ventures.

To sum up, our recommendations are: Use common sense and listen to the people; leave the VLTs in casinos and horse racing facilities; review the 1995 health status report on the problems of alcohol abuse in northern Ontario; be concerned with the quality of life, not the bottom-line dollars; look at the big picture, the whole forest and not just the trees; look at the human side of the issue: What will be the effects on people, volunteers and small community organizations that depend almost entirely on bingos and Nevada tickets?

As the government, you are promoting healthy lifestyles. My question to you is, does this contribute to healthy lifestyles and the quality of life in small northern Ontario towns? Let's get back to common sense.

Mr Kennedy: Thank you for your presentation. I understand there are a few members opposite who are fellow subscribers to the Rotary. I wonder if you could delve a little bit into why you don't think this meets that test, what you find about Bill 75 that isn't fair.

Ms Collins: I just think it's not fair to all the people of Ontario and it's not fair to the small communities that we live in. Small community organizations won't survive with the VLTs in these licensed facilities.

Mr Kennedy: You may be aware that the Break Open Ticket Program Management Alliance, indicated that they're fearful of 40% to 60% of revenue, being the experience of other provinces, of break-open tickets being lost. Is that the kind of apprehension that you have?

Ms Collins: Yes. I really believe that we probably will lose most of it, and it's different organizations. I deal with all the organizations in those communities as a hospital fund-raiser, and they do give of their funds to the hospital and many other things, community centres, all kinds of things, Boy Scouts, Girl Guides. We're running the handyman service right now. The government wouldn't start up any new programs. We run 200 trips a month, we run it three days a week, and it's all run with Nevada money, and we wouldn't be able to run it.

Mr Kennedy: Thank you. Mike.

Mr Gravelle: Good afternoon. I'm sorry I missed the bulk of your presentation. Nice to see you here, and I think it's probably an important point to make, despite what one of my colleagues across said earlier in terms of the bulk of the presentations all being absolutely in favour of going ahead with full speed. There's obviously been a very clear mix today in terms of this issue. It is a complicated issue, it's not a simple one, and I think we're very grateful to get the perspective of someone such as yourself also speaking from that perspective in terms of a Rotarian, which is not to say that you're in any way opposed to business or to helping business do better.

It's a question of really what is the overall picture, and I think that's what we need to look at more carefully with this bill, the overall picture and how it impacts on people and people's lives, how it does impact on the charitable groups and foundations and other groups that are doing that. I was just driving back from another meeting and I heard Mr Klees talked earlier about consultation taking place afterwards, and me saying I hope that would happen, and he's now been quoted on the radio as saying that, because I think it's important. I do think there's a sense of haste and rushing this forward because of the need for this revenue generation.

I think your comments today speak probably for an awful lot of people, and I'm very grateful that you've —

Ms Collins: I do represent a lot of organizations, not just Rotary and hospital, but the feeling is out there, and I tell you, I think we've got to go back and talk to some of those people.

Mr Gravelle: It's a plea that I hope the government members hear, and we're all very grateful that you've done so.

Mr Kormos: You've got a unique perspective. You're alone so far in the series of presenters, because you seem to be talking about, from a health care perspective, the need to build healthy communities and generate healthy living, this proactive prophylactic approach to health care rather than the old reactive approach. Am I fair in gleaning that from what you're saying?

Ms Collins: Yes, and we've been doing that for seven years now.

Mr Kormos: Oh, yes, and what you're saying is: "Let's look at this phenomenon that's being developed by the government in the context of that. Does this create healthy communities? Does it enhance the wellbeing of the community in a physical way, in a mental and emotional way, in a spiritual way, the whole nine yards?"

Ms Collins: Are you asking me, does it?

Mr Kormos: Yes.

Ms Collins: If you were to ask me if I was against gambling, I'm not.

Mr Kormos: I'm talking about 20,000 slots.

Ms Collins: I am definitely against that, because it's the ching, ching, ching, ching, ching that really gets people addicted to this. I don't know that the Nevada doesn't get —

Interjection.

Ms Collins: Maybe they don't. Maybe they all have buttons now, but I don't think the Nevadas are that addictive. I mean they are addictive, but they're not as

much as the slot machines, because the slot machines, I think, will increase about 50%.

Mr Kormos: And there's big bucks to be made, billions, billions, and it's made a quarter and a dime and a nickel and a loonie and a toonie at a time.

Ms Collins: But how can I access the dollars?

Mr Kormos: No, because what's remarkable is that there are clearly big interests being served by the generation of incredible profits. What's sad is they're being extracted from people a buck at a time, 50 cents at a time, a quarter at a time, a dime at a time.

We've looked at the profile of one-armed bandit players from the east coast through to the west. I read them on to the record yesterday, and they tend to be lower-income people, people with low-income employment or unemployment.

Ms Collins: That's right.

Mr Kormos: This is the game of last resort, and the government, of course, will be in the business, so they'll be promoting use of it. They'll have to, just like governments are now promoting the use of the casinos. Down at Casino Rama, they're issuing press releases about the \$15,000 winners and the \$20,000. They're not talking about the people who leave the casino broke and who go home having spent the paycheque. They're not talking about them.

Once there are these 20,000 slots, we're going to see press releases about Jane Doe up in Thunder Bay won \$500, \$1,000, \$2,000 in a slot, but a whole lot of people fed their paycheques into that slot for Jane Doe to grab her two grand. That's entertainment? They talk about this as if it were Ginger Rogers and Fred Astaire. I mean, it's nuts.

Ms Collins: Yes, it is.

Mr Klees: What's the point, Peter?

Mr Kormos: You've missed it from day one, Frank. I don't expect you to get it now.

The Chair: You didn't use all your time, Mr Kormos.

Mr Kormos: That's okay. I've said what I've had to say. These guys haven't got it from day one. They're in the back pockets of the gambling industry. They're never going to get it.

Mr Klees: Mr Chair —

The Chair: I'm sorry, Mr Kormos, I think that's unparliamentary.

Mr Kormos: Was it?

The Chair: Yes. I honestly believe that.

Mr Guzzo: No, no. I want to defend Mr Kormos because he was talking about —

Mr Kormos: I've said this about previous governments and none of them ruled it out of order, Chair, so check precedents.

The Chair: You would not withdraw it then?

Mr Kormos: No.

Mr Guzzo: You were talking about the legal gambling. We're in the back pockets of the legal gambling. The Liberals —

The Chair: Ms Bassett. Excuse me, Mr Guzzo.

Ms Isabel Bassett (St Andrew-St Patrick): Don't interrupt my time.

The Chair: We have a meeting going on.

Mr Guzzo: The Liberals must be in the back pockets —

The Chair: Ms Bassett, please.

Ms Bassett: Ms Collins, as director of development obviously you're concerned, as you said, about access to dollars to help your hospital, and I wanted to make you aware of the fact that our government, recognizing the problems that all hospitals and charitable organizations and cultural organizations are having, we've brought in the Crown Foundations Act that will be very advantageous for large donations to hospitals. I ask you to be in touch with me following this and I can fill you in, because your hospital will certainly be able to benefit from that. It is one step towards not to recovering all that you might lose, but it is a step —

Ms Collins: I am familiar with the crown foundations, but you also have to have the big donors that are able to do that. In our small communities we only have a handful of huge donors, not like in big cities. We could never compete with Toronto on any level compared to small communities.

Ms Bassett: If I can, since I'm familiar with the act, people have been contacting me, people from across the province in small northern communities, waiting for this to go through so that they can make large donations — believe me. So there are some. There may be not as many because the population isn't as much up here. Anyway, be in touch about that.

Ms Collins: Okay. I will.

Mr Ron Johnson: I want to again thank you for your presentation. My question stems from a couple of things you said. In particular you indicated you were concerned that a lot of the local organizations and charities now are using the bingos and of course the break-open tickets for their fund-raising initiatives and efforts, and you said you expected that to dry up and that a lot of the organizations would now see that funding disappear.

I really want to get rid of all the myths and misinformation that's out there about this, and a lot of it is coming from that side, quite frankly. What is it that causes you to believe that all of that money that is now

being generated through break-open tickets and bingos will somehow disappear? How come you believe that?

Ms Collins: Because we feel that most of the people will be going to the licensed facilities to spend their money there and we feel that the Nevada tickets will dry up.

Mr Ron Johnson: To give you a bit of background just briefly, if you look at the experience that other jurisdictions have had, that's simply not the case. In fact if you look at the break-open ticket industry — and you said you run one of your main programs from break-open tickets. If you look at Alberta, in fact there was absolutely no decline in break-open tickets as a result of VLTs. I think it's important, and you indicated as well, that we need to learn from other jurisdictions. I would suggest to you in this particular case we've done that, that we're looking at Alberta as an example of the break-open industry and what happened with them and their VLTs, and we saw that there was no impact. Therefore, we're confident that in fact the revenue that you now receive and your organizations receive from break-open tickets will not diminish; in fact it may not be affected at all.

Ms Collins: I would really like to see those figures —

Mr Ron Johnson: Absolutely.

Ms Collins: — because I've talked to people from Manitoba and they've told me that the break-opens have literally disappeared in Manitoba.

Mr Kormos: Maybe Mr Johnson will commit himself to making up the difference personally —

The Chair: Thank you, Mr Johnson. Basically all the time has been used.

Interjection.

Mr Ron Johnson: It's the wonderful town of Brantford.

The Chair: Speak to Mr Johnson, not myself. The time has been used by our caucus. Ms Collins, I thank you very much for your presentation here today.

I would ask members to remain so we could discuss the trip this evening, but I am adjourning this hearing to 8:20, you'll be pleased to hear, in the morning in Kenora.

The committee adjourned at 1615.

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**In attendance / présents*

Substitutions present / Membres remplaçants présents:

Ms Isabel Bassett (St Andrew-St Patrick PC) for Mr Doyle
Mr Bruce Crozier (Essex South / -Sud L) for Mr Chiarelli
Mr Jim Flaherty (Durham Centre / -Centre PC) for Mr Tilson
Mr Gerard Kennedy (York South / -Sud L) for Mr Conway
Mr Peter Kormos (Welland-Thorold ND) for Mr Hampton
Mr Douglas B. Ford (Etobicoke-Humber PC) for Mr Leadston
Mr Terence H. Young (Halton Centre / -Centre PC) for Mr Parker

Also taking part / Autres participants et participantes:

Mr Michael Gravelle (Port Arthur L)

Clerk / Greffière: Ms Donna Bryce

Staff / Personnel: Mr Andrew McNaught, research officer, Legislative Research Service

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